

15-2143

United States Court of Appeals
for the Second Circuit



Louis Rivera,

Plaintiff-Appellant,

v.

Anjost Corporation, Joseph Zaro,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

LAW OFFICE OF ROBERT S. POWERS
ROBERT S. POWERS
Attorneys for Plaintiff-Appellant
1540 August Road
North Babylon, New York 11703
(631) 940-7121
rpowers435@gmail.com

VENABLE LLP
MICHAEL J. VOLPE
Attorneys for Defendants-Appellees
1270 Avenue of the Americas, 25th Floor
New York, New York 10020
(212) 307-5500
mjvolpe@Venable.com

TABLE OF CONTENTS

	<i>Pages</i>
Docket Sheet	A1-A5
Notice of Motion for Summary Judgment, dated May 15, 2015.....	A6-A7
Declaration of Adam G. Possidente, Esq. in Support of Motion for Summary Judgment.....	A8-A9
Exhibit A – Transcript of May 6, 2015 Conference.....	A10-A37
Exhibit B – Defendants’ Personnel Profile Sheet for Plaintiff, dated July 31, 2007.....	A38-A39
Exhibit C – Sample Earning Statements for Plaintiff, reflecting salary of \$850.00.....	A40-A49
Exhibit D – Defendants’ Personal Profile Sheet for Plaintiff, dated February 1, 2011	A50-A51
Exhibit E – Sample Earning Statements for Plaintiff, reflecting salary of \$1,097.00.....	A52-A64
Exhibit F – Sample Earning Statements for Plaintiff, reflecting salary of \$1,207.00.....	A65-A86
Exhibit G – Sample Earning Statements for Plaintiff, reflecting salary of \$1,377.00.....	A87-A112
Exhibit H – New York Department of Labor Opinion Letter RO-10-0063, dated December 7, 2010	A113-A116

	<u>Pages</u>
Exhibit I – Relevant Excerpts of Louis Rivera’s Deposition Transcript, dated October 8, 2013.....	A117-A180
Defendants’ Statement of Undisputed Facts Pursuant to Local Rule 56.1(A), dated May 15, 2015	A181-A184
Declaration of Louis Rivera in Opposition to Motion for Summary Judgment, dated May 29, 2015	A185-A186
Declaration of Robert S. Powers, Esq. in Opposition to Motion for Summary Judgment, dated May 29, 2015.....	A187
Declaration of Adam G. Possidente, Esq. in Support of Motion for Summary Judgment, dated June 2, 2015.....	A188
Exhibit 1 – Relevant Excerpts of Louis Rivera’s Deposition Transcript, dated October 8, 2013.....	A189-A191
Plaintiff’s Response to Defendants’ Statement of Undisputed Facts Pursuant to Local Rule 56.1(A), dated May 29, 2015.....	A192-A193
Memo Endorsement granting Motion for Summary Judgment, So-Ordered June 4, 2015.....	A194-A195
Notice of Appeal filed July 6, 2015.....	A196

CLOSED,APPEAL,ECF

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:13-cv-00379-MGC**

Rivera v. Anjost Corporation et al
Assigned to: Judge Miriam Goldman Cedarbaum
Cause: 29:201 Denial of Overtime Compensation

Date Filed: 01/16/2013
Date Terminated: 06/05/2015
Jury Demand: Plaintiff
Nature of Suit: 710 Labor: Fair Standards
Jurisdiction: Federal Question

Plaintiff**Louis Rivera**

represented by **Robert S. Powers**
Law Office of Robert S. Powers
1540 August Road
North Babylon, NY 11703
631-940-7121
Fax: (631)-940-7121
Email: rpowers435@gmail.com
ATTORNEY TO BE NOTICED

V.

Defendant**Anjost Corporation**

represented by **Michael J. Volpe**
Venable LLP (NYC)
1270 Ave of the Americas
New York, NY 10020
(212)307-5500 x808-5676
Fax: (212)307-5598
Email: mvolpe@venable.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Adam Gordon Possidente
Venable LLP (NYC)
1270 Ave of the Americas
New York, NY 10020
(212)-370-6282
Fax: (212)-307-5598
Email: agpossidente@venable.com
ATTORNEY TO BE NOTICED

Defendant**Joseph Zaro**

represented by **Michael J. Volpe**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Adam Gordon Possidente
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/16/2013	1	COMPLAINT against Anjost Corporation, Joseph Zaro. (Filing Fee \$ 350.00, Receipt Number 465401057888)Document filed by Louis Rivera.(cde) (Entered: 01/22/2013)
01/16/2013		SUMMONS ISSUED as to Anjost Corporation, Joseph Zaro. (cde) (Entered: 01/22/2013)

01/16/2013		Magistrate Judge Frank Maas is so designated. (cde) (Entered: 01/22/2013)
01/16/2013		Case Designated ECF. (cde) (Entered: 01/22/2013)
03/06/2013	<u>2</u>	NOTICE OF CHANGE OF ADDRESS by Robert S. Powers on behalf of Louis Rivera. New Address: Law Office of Robert S. Powers, 1540 August Road, North Babylon, New York, 11703, 631-940-7121. (Powers, Robert) (Entered: 03/06/2013)
03/06/2013	<u>3</u>	SUMMONS RETURNED EXECUTED. Joseph Zaro served on 2/14/2013, answer due 3/7/2013. Document filed by Louis Rivera. (Powers, Robert) (Entered: 03/06/2013)
03/11/2013	<u>4</u>	ENDORSED LETTER addressed to Judge Miriam Goldman Cedarbaum from Adam G. Possidente dated 3/5/2013 re: Defendants respectfully request an extension of time until 4/4/2013 to answer or move in response to the Complaint in this matter. ENDORSEMENT: Motion granted. Anjost Corporation answer due 4/4/2013; Joseph Zaro answer due 4/4/2013. (Signed by Judge Miriam Goldman Cedarbaum on 3/11/2013) (sac) (Entered: 03/11/2013)
03/20/2013		Minute Entry for proceedings held before Judge Miriam Goldman Cedarbaum: Initial Pretrial Conference held on 3/20/2013. (Daniels, Anthony) (Entered: 03/22/2013)
04/04/2013	<u>5</u>	NOTICE OF APPEARANCE by Michael J. Volpe on behalf of Anjost Corporation, Joseph Zaro (Volpe, Michael) (Entered: 04/04/2013)
04/04/2013	<u>6</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Anjost Corporation, Joseph Zaro.(Volpe, Michael) (Entered: 04/04/2013)
04/04/2013	<u>7</u>	ANSWER to 1 Complaint. Document filed by Anjost Corporation, Joseph Zaro.(Volpe, Michael) (Entered: 04/04/2013)
04/04/2013	<u>8</u>	NOTICE OF APPEARANCE by Adam Gordon Possidente on behalf of Anjost Corporation, Joseph Zaro (Possidente, Adam) (Entered: 04/04/2013)
04/21/2015	<u>9</u>	LETTER MOTION for Conference addressed to Judge Miriam Goldman Cedarbaum from Robert S. Powers dated April 21, 2015. Document filed by Louis Rivera.(Powers, Robert) (Entered: 04/21/2015)
04/28/2015		Status Conference/Discovery Conference set for 5/6/2015 at 02:30 PM in Courtroom 14A, 500 Pearl Street, New York, NY 10007 before Judge Miriam Goldman Cedarbaum. (ml) (Entered: 04/28/2015)
05/06/2015		Minute Entry for proceedings held before Judge Miriam Goldman Cedarbaum: Status/Discovery Conference held on 5/6/2015; Conference is treated as pre-motion conference; Defendant to file motion for summary judgment by May 15; Plaintiff to respond by May 29; Return date for motion for summary judgment set for June 4, 2015 at 11:30 AM. (Court Reporter Tom Murray) (ml) (Entered: 05/06/2015)
05/06/2015		Oral Argument on motion for summary judgment set for 6/4/2015 at 11:30 AM in Courtroom 14A, 500 Pearl Street, New York, NY 10007 before Judge Miriam Goldman Cedarbaum. (ml) (Entered: 05/06/2015)
05/15/2015	<u>10</u>	MOTION for Summary Judgment . Document filed by Anjost Corporation, Joseph Zaro. Responses due by 5/29/2015 Return Date set for 6/4/2015 at 11:30 AM.(Possidente, Adam) (Entered: 05/15/2015)
05/15/2015	<u>11</u>	DECLARATION of Adam G. Possidente in Support re: <u>10</u> MOTION for Summary Judgment .. Document filed by Anjost Corporation, Joseph Zaro. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit)(Possidente, Adam) (Entered: 05/15/2015)
05/15/2015	<u>12</u>	MEMORANDUM OF LAW in Support re: <u>10</u> MOTION for Summary Judgment . . Document filed by Anjost Corporation, Joseph Zaro. (Possidente, Adam) (Entered: 05/15/2015)

05/15/2015	<u>13</u>	RULE 56.1 STATEMENT. Document filed by Anjost Corporation, Joseph Zaro. (Possidente, Adam) (Entered: 05/15/2015)
05/22/2015	<u>14</u>	TRANSCRIPT of Proceedings re: conference held on 5/6/2015 before Judge Miriam Goldman Cedarbaum. Court Reporter/Transcriber: Thomas Murray, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/15/2015. Redacted Transcript Deadline set for 6/25/2015. Release of Transcript Restriction set for 8/24/2015.(McGuirk, Kelly) (Entered: 05/22/2015)
05/22/2015	<u>15</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a conference proceeding held on 5/6/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(McGuirk, Kelly) (Entered: 05/22/2015)
05/29/2015	<u>16</u>	MEMORANDUM OF LAW in Opposition re: <u>10</u> MOTION for Summary Judgment . . Document filed by Louis Rivera. (Powers, Robert) (Entered: 05/29/2015)
05/29/2015	<u>17</u>	DECLARATION of Louis Rivera in Opposition re: <u>10</u> MOTION for Summary Judgment .. Document filed by Louis Rivera. (Powers, Robert) (Entered: 05/29/2015)
05/29/2015	<u>18</u>	DECLARATION of Robert S. Powers in Opposition re: <u>10</u> MOTION for Summary Judgment .. Document filed by Louis Rivera. (Powers, Robert) (Entered: 05/29/2015)
05/29/2015	<u>19</u>	FILING ERROR – WRONG EVENT TYPE SELECTED FROM MENU – RESPONSE in Opposition to Motion re: <u>10</u> MOTION for Summary Judgment . <i>Rule 56 Response</i> . Document filed by Louis Rivera. (Powers, Robert) Modified on 6/1/2015 (db). (Entered: 05/29/2015)
06/01/2015		***NOTICE TO ATTORNEY TO RE-FILE DOCUMENT – EVENT TYPE ERROR. Notice to Attorney Robert S. Powers to RE-FILE Document <u>19</u> Response in Opposition to Motion. Use the event type Response (non-motion) found under the event list Other Answers. (db) (Entered: 06/01/2015)
06/02/2015	<u>20</u>	REPLY MEMORANDUM OF LAW in Support re: <u>10</u> MOTION for Summary Judgment . . Document filed by Anjost Corporation, Joseph Zaro. (Possidente, Adam) (Entered: 06/02/2015)
06/02/2015	<u>21</u>	DECLARATION of Adam G. Possidente in Support re: <u>10</u> MOTION for Summary Judgment .. Document filed by Anjost Corporation, Joseph Zaro. (Attachments: # <u>1</u> Exhibit 1)(Possidente, Adam) (Entered: 06/02/2015)
06/03/2015	<u>22</u>	RULE 56.1 STATEMENT. Document filed by Louis Rivera. (Powers, Robert) (Entered: 06/03/2015)
06/04/2015		Minute Entry for proceedings held before Judge Miriam Goldman Cedarbaum: Motion Hearing held on 6/4/2015 re: <u>10</u> MOTION for Summary Judgment . filed by Joseph Zaro, Anjost Corporation; All parties having appeared; Defendants' Motion for Summary Judgment is granted. (Court Reporter Linda Fisher) (ml) (Entered: 06/04/2015)
06/04/2015	<u>23</u>	MEMO ENDORSEMENT granting <u>10</u> Motion for Summary Judgment. ENDORSEMENT: Motion for summary judgment granted. For oral opinion, see record of proceedings; close case. So ordered. (Signed by Judge Miriam Goldman Cedarbaum on 6/4/2015) (mro) (Entered: 06/05/2015)
06/04/2015		Transmission to Judgments and Orders Clerk. Transmitted re: <u>23</u> Order on Motion for Summary Judgment, to the Judgments and Orders Clerk. (mro) (Entered: 06/05/2015)

A4

07/03/2015	<u>24</u>	FILING ERROR – NO ORDER SELECTED FOR APPEAL – NOTICE OF APPEAL. Document filed by Louis Rivera. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Powers, Robert) Modified on 7/6/2015 (tp). (Entered: 07/03/2015)
07/06/2015		***NOTICE TO ATTORNEY REGARDING DEFICIENT APPEAL. Notice to attorney Powers, Robert to RE-FILE Document No. <u>24</u> Notice of Appeal. The filing is deficient for the following reason(s): the order/judgment being appealed was not selected. Re-file the appeal using the event type Corrected Notice of Appeal found under the event list Appeal Documents – select the correct order/judgment being appealed. (tp) (Entered: 07/06/2015)
07/06/2015	<u>25</u>	FILING ERROR – WRONG EVENT TYPE SELECTED FROM MENU – AMENDED NOTICE OF APPEAL re: <u>24</u> Notice of Appeal, <u>23</u> Order on Motion for Summary Judgment. Document filed by Louis Rivera. (Powers, Robert) Modified on 7/6/2015 (tp). (Entered: 07/06/2015)
07/06/2015		***NOTICE TO ATTORNEY REGARDING DEFICIENT APPEAL. Notice to attorney Powers, Robert to RE-FILE Document No. <u>25</u> Amended Notice of Appeal. The filing is deficient for the following reason(s): the wrong event type was used to file the appeal. Re-file the appeal using the event type Corrected Notice of Appeal found under the event list Appeal Documents – select the correct order/judgment being appealed. (tp) (Entered: 07/06/2015)
07/06/2015	<u>26</u>	FILING ERROR – WRONG EVENT TYPE SELECTED FROM MENU – AMENDED NOTICE OF APPEAL re: <u>24</u> Notice of Appeal, <u>23</u> Order on Motion for Summary Judgment. Document filed by Louis Rivera. (Powers, Robert) Modified on 7/6/2015 (tp). (Entered: 07/06/2015)
07/06/2015		***NOTICE TO ATTORNEY REGARDING DEFICIENT APPEAL. Notice to attorney Powers, Robert to RE-FILE Document No. <u>26</u> Amended Notice of Appeal. The filing is deficient for the following reason(s): the wrong event type was used to file the appeal. Re-file the appeal using the event type Corrected Notice of Appeal found under the event list Appeal Documents – attach the correct signed PDF – select the correct named filer/filers – select the correct order/judgment being appealed. (tp) (Entered: 07/06/2015)
07/06/2015	<u>27</u>	CORRECTED NOTICE OF APPEAL re: <u>24</u> Notice of Appeal, <u>23</u> Order on Motion for Summary Judgment. Document filed by Louis Rivera. (Powers, Robert) (Entered: 07/06/2015)
07/06/2015		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>27</u> Corrected Notice of Appeal. (tp) (Entered: 07/06/2015)
07/06/2015		Appeal Fee Due: for <u>27</u> Corrected Notice of Appeal. Appeal fee due by 7/20/2015. (tp) (Entered: 07/06/2015)
07/06/2015		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>27</u> Corrected Notice of Appeal filed by Louis Rivera were transmitted to the U.S. Court of Appeals. (tp) (Entered: 07/06/2015)
07/20/2015		Appeal Fee Payment: for <u>27</u> Corrected Notice of Appeal. Filing fee \$ 505.00, receipt number 0208-11173438. (Powers, Robert) (Entered: 07/20/2015)
07/22/2015	<u>28</u>	TRANSCRIPT of Proceedings re: Conference held on 6/4/2015 before Judge Miriam Goldman Cedarbaum. Court Reporter/Transcriber: Linda Fisher, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/17/2015. Redacted Transcript Deadline set for 8/27/2015. Release of Transcript Restriction set for 10/23/2015.(Rodriguez, Somari) (Entered: 07/22/2015)
07/22/2015	<u>29</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a Conference proceeding held on 06/04/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made

A5

		remotely electronically available to the public without redaction after 90 calendar days...(Rodriguez, Somari) (Entered: 07/22/2015)
--	--	--------------------------------------------------------------------------------------------------------------------------------------

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS RIVERA,

Plaintiff,

– against –

ANJOST CORPORATION and JOSEPH
ZARO,

Defendants.

Case No.: 13-cv-00379 (MGC)

NOTICE OF MOTION
FOR SUMMARY JUDGMENT

ORAL ARGUMENT REQUESTED

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law in Support of Defendants’ Motion for Summary Judgment, Defendants’ Statement of Undisputed Material Facts Pursuant to Local Rule 56.1(a), and the Declaration of Adam G. Possidente and the exhibits annexed thereto, Defendants Anjost Corporation and Joseph Zaro (together, “Defendants”) will move this Court, before the Honorable Miriam Goldman Cedarbaum, Courtroom 14A, 500 Pearl Street, New York, New York 10007, on June 4, 2015 at 11:30 a.m., for an order granting summary judgment against Plaintiff, and granting Defendants such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order of this Court entered on May 6, 2015, answering papers, if any, are required to be served on the undersigned no later than May 29, 2015.

Dated: New York, New York
May 15, 2015

VENABLE LLP

/s/

Michael J. Volpe
Adam G. Possidente
Rockefeller Center
1270 Avenue of the Americas, 24th Floor
New York, New York 10020

A7

Case 1:13-cv-00379-MGC Document 10 Filed 05/15/15 Page 2 of 2

Telephone: (212) 307-5500
Fax: (212) 307-5598

*Attorneys for Defendants Anjost Corporation
and Joseph Zaro*

To: Robert S. Powers
Law Office of Robert S. Powers
1540 August Road
North Babylon, NY 11703
Telephone: (631) 940-7121
Email: rpowers435@optimum.net

Counsel for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS RIVERA,

Plaintiff,

– against –

ANJOST CORPORATION and JOSEPH ZARO,

Defendants.

Case No.: 13-cv-00379 (MGC)

DECLARATION
OF ADAM G. POSSIDENTE

I, **ADAM G. POSSIDENTE**, declare under penalty of perjury that the foregoing is true and correct:

1. I am an associate at the law firm Venable LLP in New York, New York. Venable LLP represents Defendants Anjost Corporation and Joseph Zaro (“Defendants”) in the above-captioned matter (the “Action”). I submit this Declaration in support of Defendants’ Motion for Summary Judgment. I have personal knowledge of the facts stated herein, unless otherwise stated, and if called upon to do so, I would competently testify thereto.

2. A true and correct copy of the transcript of the May 6, 2015 Conference before the Honorable Miriam Goldman Cedarbaum in the Action is attached hereto as **Exhibit A**.

3. A true and correct copy of Defendants’ Personnel Profile Sheet for Plaintiff, dated July 31, 2007, is attached hereto as **Exhibit B**.

4. True and correct copies of sample earning statements for Plaintiff, reflecting that he earned a weekly salary of \$850 for a period of time while employed by Defendants, are attached hereto as **Exhibit C**.

5. A true and correct copy of Defendants’ Personnel Profile Sheet for Plaintiff, dated February 1, 2011, is attached hereto as **Exhibit D**.

6. True and correct copies of sample earning statements for Plaintiff, reflecting that he earned a weekly salary of \$1,097 for a period of time while employed by Defendants, are attached hereto as **Exhibit E**.

7. True and correct copies of sample earning statements for Plaintiff, reflecting that he earned a weekly salary of \$1,207 for a period of time while employed by Defendants, are attached hereto as **Exhibit F**.

8. True and correct copies of sample earning statements for Plaintiff, reflecting that he earned a weekly salary of \$1,377 for a period of time while employed by Defendants, are attached hereto as **Exhibit G**.

9. A true and correct copy of a New York Department of Labor Opinion Letter RO-10-0063, dated December 7, 2010, is attached hereto as **Exhibit H**.

10. True and correct copies of relevant excerpts of plaintiff Louis Rivera's deposition transcript, dated October 8, 2013, are attached hereto as **Exhibit I**.

Dated: New York, New York
May 15, 2015

/s/
Adam G. Possidente

Exhibit A

A11

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 2 of 28
F56rrivc

1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 LOUIS RIVERA,

4 Plaintiff,

5 v.

13 Civ. 379 (MGC)

6 ANJOST CORPORATION and JOSEPH
7 ZARO,

Conference

8 Defendants.

-----x

9 New York, N.Y.

10 May 6, 2015

2:30 p.m.

11 Before:

12 HON. MIRIAM GOLDMAN CEDARBAUM

13 District Judge

14
15
16
17
18 APPEARANCES

19 ROBERT S. POWERS
20 Attorney for Plaintiff

21 VENABLE LLP
22 Attorneys for Defendants
23 BY: ADAM G. POSSIDENTE
24
25

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 3 of 28
F56rrivc

2

1 (Case called; in chambers)

2 THE COURT: Good afternoon. This is a very slow-
3 moving case.

4 MR. POSSIDENTE: It really hasn't moved, your Honor.
5 Plaintiff hasn't conducted any discovery yet or done anything.

6 THE COURT: Then why should I dismiss for failure to
7 prosecute?

8 MR. POWERS: He isn't quite correct.

9 THE COURT: It doesn't have to be exact. It has to be
10 close.

11 MR. POWERS: He conducted my client's deposition. My
12 client was deposed. I sent out notices for his client's
13 deposition, and he never's produced his clients for deposition.

14 THE COURT: Why didn't you apply to the Court to
15 depose his client?

16 MR. POWERS: At that point we went into settlement
17 discussions. We went back and forth for a while. Finally,
18 those discussions went by the board.

19 THE COURT: You have not deposed the defendant yet?

20 MR. POWERS: I have not deposed the defendant.

21 THE COURT: When was this lawsuit instituted? When
22 did you file the complaint?

23 MR. POWERS: In 2013.

24 THE COURT: You have not done anything since?

25 MR. POWERS: We have gotten discovery. We have gotten

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 4 of 28
F56rrivc

3

1 some documentation from the defendants, substantial
2 documentation.

3 THE COURT: What kind of documentation?

4 MR. POWERS: We have all the employment records of the
5 defendant.

6 THE COURT: What do they show you?

7 MR. POWERS: They showed me that the plaintiff was
8 paid different amounts each week, he was not paid the same
9 amounts, depending upon how many days he worked in the week.

10 THE COURT: How many days?

11 MR. POWERS: Right, based on a daily --

12 THE COURT: What was the plaintiff's job?

13 MR. POWERS: He was, I guess, the manager of a
14 commissary. I think it was at Grand Central.

15 THE COURT: When you say a commissary, what do you
16 mean?

17 MR. POWERS: This's a store that they operate.

18 THE COURT: Who are "they"?

19 MR. POWERS: Zaro's.

20 THE COURT: This is a bakery?

21 MR. POWERS: It's a retail store. He prepared foods
22 and whatnot, made foods and whatnot for that store and other
23 stores, plus he helped run the store at Grand Central.

24 THE COURT: So partly he was a chef and partly he
25 was --

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 5 of 28
F56rrivc

4

1 MR. POWERS: He was a manager.

2 THE COURT: -- a manager of some kind?

3 MR. POWERS: Yes.

4 THE COURT: Your position is that he should be paid by
5 the hour and paid overtime for overtime hours, is that right?

6 MR. POWERS: My position is that although he could
7 have been in an exempt classification by paying him on a daily
8 rate, they lost the right to an exemption.

9 THE COURT: Is there some provision of the statute
10 that says if you pay a different way, it makes him a different
11 kind of employee?

12 MR. POWERS: The provision of the statute, it is
13 actually the regulations of the Department of Labor.

14 THE COURT: What regulation do you rely on?

15 MR. POWERS: 229 C.F.R. 541.118.

16 THE COURT: That says what?

17 MR. POWERS: It says that an employee is considered
18 paid on a salary basis if he regularly receives each pay period
19 on a weekly or less frequent basis a predetermined amount
20 constituting all or part of his compensation, which amount is
21 not subject to reduction because of the variations in the
22 quality or quantity in work performed. If you pay someone on a
23 per day rate, you don't come within the statutory provision,
24 you don't get the benefit of being a salaried employee.

25 THE COURT: Why is that? I thought you want him to be

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 6 of 28
F56rrivc

5

1 an hourly employee.

2 MR. POWERS: Yes, that's correct. What I'm saying is
3 if you pay someone on less than a weekly or monthly basis, then
4 he becomes an hourly employee.

5 THE COURT: I don't hear that in what you read. What
6 says that if you are not paid --

7 MR. POWERS: If you are paid more frequently than the
8 minimum weekly requirement, then you don't fit the definition
9 of a salaried employee under this provision.

10 THE COURT: Is that what that language says, what you
11 just read to me? No, that's not what it says.

12 MR. POWERS: If he regularly receives each pay period
13 on a weekly or less frequent basis. In this case he is on a
14 more frequent basis, so he doesn't comply --

15 THE COURT: You think if you earn by the hour and not
16 by the week, it makes a difference?

17 MR. POWERS: Yes. In other words, if you pay somebody
18 basically for a day as opposed to a week, under the statute or
19 under the regulation --

20 THE COURT: If you are paid for a day and you are an
21 hourly employee, it depends on how many hours you work, isn't
22 that right?

23 MR. POWERS: Correct.

24 THE COURT: Which is less than a day can be. You can
25 be an hourly employee for less than a day.

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 7 of 28
F56rrivc

6

1 MR. POWERS: Certainly.

2 THE COURT: But that's not what you just said.

3 MR. POWERS: If you pay somebody on a daily rate,
4 under the regulation, in other words, if I have employees and I
5 say I'll pay you \$100 a day, or let's say \$300 a day,
6 whatever --

7 THE COURT: How does that make you not an hourly
8 employee?

9 MR. POWERS: It doesn't. You become an hourly
10 employee under the statute.

11 THE COURT: I see, if you're paid for a day. But if
12 you're paid by the hour, you're not. That can't be the rule.

13 MR. POWERS: No. If you're paid by the hour, you are
14 obviously an hourly employee. But you don't get the benefit of
15 the statute if you're paid at a daily rate.

16 THE COURT: How do you determine whether someone is
17 paid on a daily rate?

18 MR. POWERS: You determine what is their rate of pay.
19 In this case if he worked six days, he got one amount; if he
20 worked seven days, he got a different amount.

21 THE COURT: Weren't there more hours on seven days?

22 MR. POWERS: But he was paid based on a daily basis.

23 THE COURT: How do you know that? What is it that his
24 paystub showed?

25 MR. POWERS: The paystub itself would only show the

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 8 of 28
F56rrivc

7

1 amount.

2 THE COURT: The number of hours it would normally show
3 if he were an hourly employee, isn't that right?

4 MR. POWERS: I'm not sure. Well, I think they did
5 show hours, but that was only based on the day, it wasn't the
6 actual hours that he worked. In other words, he could have
7 worked 72 hours, and I think they would only show 40. But that
8 is just because of the computer.

9 THE COURT: You don't have any such paystub that
10 showed only 40 hours on a day that he worked all day?

11 MR. POWERS: They didn't compute his rate based on
12 hours. They didn't pay him based on hours. They paid him
13 based on a daily rate. If he worked seven hours, he would get
14 the same as if he worked 12 hours.

15 THE COURT: Did that ever happen?

16 MR. POWERS: It happened all the time.

17 THE COURT: Let's review. What did he earn?

18 MR. POSSIDENTE: Here is the problem, your Honor, with
19 all of this. To stick to the merits -- well, let me back up.
20 The timing on this case is as follows. Mr. Rivera commences
21 the action in January 2013. We proceed to produce, pursuant to
22 our Rule 26 obligations, all of his pay records and his
23 employment jacket, which are the documents we are talking about
24 now. Then we take Mr. Rivera's deposition later that year.
25 Plaintiff doesn't conduct any discovery for an entire year

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 9 of 28
F56rrivc

8

1 until he serves deposition notices in April of 2014, a full 13
2 months after he has commenced the litigation.

3 THE COURT: Wow. And the complaint doesn't set out
4 what days he received what pay?

5 MR. POSSIDENTE: This is what is interesting. The
6 complaint just alleges that he was an exempt employee, which,
7 based on Mr. Rivera's testimony and what Mr. Powers just said,
8 is demonstrably untrue. He was the manager of Zaro's
9 commissary, which is in Grand Central, true, but it is sort of
10 the preparation station. Zaro's has a bunch of different
11 bakeries around the city. The commissary is where they'll go
12 and they'll prep food, they'll prep sandwiches and bagels and
13 all sorts of things that the bakery sells and distribute them
14 out.

15 Mr. Rivera is a trained chef, as I understand it, but
16 his job there was really a management position.. He was
17 managing the 14 to 15, as he testified, sous chefs that were
18 working the kitchen. He worked a five-day week. He was paid a
19 salary, which is sort of I think the key distinction here that
20 we can circle back to.

21 THE COURT: He was paid by the week?

22 MR. POSSIDENTE: He was paid a weekly salary, not
23 subject to any nonstandard deductions, only deductions that we
24 took or the typical SSI, Social Security, and the normal
25 Medicare deductions. But no deductions for hours, which is I

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 10 of 28
F56rrivc

9

1 think the real key point here.

2 We received these notices of deposition a year late, a
3 year into the case, and sent a letter to Mr. Powers saying
4 these deposition notices are deficient because we had appeared
5 before your Honor in March of 2013 and had entered into a
6 scheduling order which called for discovery to be complete.

7 THE COURT: Where is that scheduling order?

8 MR. POSSIDENTE: Unfortunately -- we handed it to your
9 Honor -- it seems to have gotten misplaced in the mail. The
10 scheduling order called for discovery to close in October of
11 2013. Mr. Powers took no discovery until he attempted to take
12 discovery of our clients in 2014.

13 We sent him a letter saying these notices are a
14 nullity given that they come after the date for the close of
15 discovery. That's in April. I hear nothing until August or
16 September, when I get a call from Mr. Powers saying, I've
17 received your letter and what is your position vis-a-vis this
18 case. I said, my position is your client was paid accurately,
19 but we are willing to discuss a nuisance value settlement to
20 avoid the cost and risk and pain of litigation. We discussed
21 that for a few months, and here we are.

22 As to the merits of the case, the way Mr. Rivera was
23 paid and what the pay records and what Mr. Rivera's testimony
24 establish is that he was paid a salary 40 hours a week. He
25 received sick time, he received vacation time, he received

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 11 of 28
F56rrivc

10

1 personal days, all paid. In order to incentivize Mr. Rivera
2 toward extra time, they would ask him to work an extra day here
3 or there and they would pay him for that day.

4 THE COURT: By the day?

5 MR. POSSIDENTE: By the day for that sixth day.

6 That is the schedule that was never so ordered by your
7 Honor, but defendants complied with those dates.

8 The way Mr. Rivera was paid was to receive a salary
9 for 40 hours a week. When he was asked to work extra time, in
10 order to incentivize him to be willing to work the extra days,
11 he was paid one-fifth of his salary, which is I guess where the
12 date rate issue comes from.

13 The problem is that under 29 C.F.R. 541.604, that's
14 absolutely permissible. That section of the C.F.R. says an
15 employer may provide an exempt employee with additional
16 compensation without losing the exemption or violating the
17 salary basis requirement if the employment arrangement also
18 includes a guarantee of at least the minimum weekly required
19 amount paid on a salary basis. That is literally exactly how
20 Mr. Rivera was paid.

21 The problem we have here is we have a plaintiff that
22 has taken no discovery for a year, or now two really, with some
23 settlement discussions in there, to be fair. But he was
24 absolutely paid and his testimony and the pay records establish
25 that he was paid in this manner. I actually have a sample of

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 12 of 28
F56rrivc

11

1 the records here, if you think it would be helpful to see how
2 he was paid. But this hourly versus daily, that distinction
3 doesn't matter.

4 THE COURT: For how many years did he work there?

5 MR. POSSIDENTE: The complaint says 2007 to 2012.

6 THE COURT: For five years.

7 MR. POSSIDENTE: Five years.

8 THE COURT: And he never complained?

9 MR. POSSIDENTE: I don't think he complained, because
10 he was being paid a salary and then he was asked to work extra
11 time. He didn't have to work. He was asked to work extra
12 days. When he would work that, he was paid extra. So he was
13 incentivized to work more time in total compliance with the
14 C.F.R. There is actually Second Circuit case law that says, it
15 is Havey v. Homebound Mortgage, 547 F.3d 158. Additional
16 compensation besides a salary is not inconsistent with the
17 salary basis of payment.

18 So no. I assume he was happy to do it because he was
19 being paid above and beyond his salary for doing extra work
20 that as an exempt employee he could have been asked to do
21 anyway.

22 THE COURT: I see. When did he leave his employment?

23 MR. POSSIDENTE: In 2012 he was terminated.

24 THE COURT: He was terminated?

25 MR. POSSIDENTE: Yes.

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 13 of 28
F56rrivc

12

1 THE COURT: He didn't leave voluntarily?

2 MR. POSSIDENTE: Unfortunately, he was terminated for
3 reasons relating to a sexual harassment issue. Our position
4 here is given the facts of the case and the fact that he was
5 paid in absolute compliance with the law and the fact that no
6 discovery has been taken for two years, the case should be
7 dismissed. The claims are meritless and there has been an
8 enormous delay in getting this case resolved.

9 THE COURT: But you haven't moved to dismiss for
10 failure to prosecute. Why?

11 MR. POSSIDENTE: Frankly, your Honor, it wasn't our
12 burden. We didn't think it was our burden to move the case
13 forward.

14 THE COURT: Of course it is not your burden.

15 MR. POSSIDENTE: Now that we are here and Mr. Rivera
16 has resuscitated the case, we filed a letter seeking permission
17 to move for summary judgment based upon what we just discussed
18 or failure to prosecute if Mr. Rivera is now going to push the
19 case forward. While the case was not being litigated, as the
20 defendants, we felt no obligation to advance the case that was
21 effectively for all intents and purposes stayed.

22 THE COURT: What happened to Mr. Rivera during those
23 year?

24 MR. POWERS: Which years?

25 THE COURT: The years in which you did not prosecute

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 14 of 28
F56rrivc

13

1 this case.

2 MR. POWERS: He appeared for his deposition.

3 THE COURT: That was not part of prosecuting the case.

4 MR. POWERS: I understand that. Your Honor, that was
5 on my shoulders, not his.

6 THE COURT: That's neither here nor there. He calls
7 himself the plaintiff here.

8 MR. POWERS: I understand that, your Honor.

9 THE COURT: Is he working somewhere else as a chef?

10 MR. POWERS: He gets jobs off and on, yes.

11 THE COURT: But he doesn't have continuous employment?

12 MR. POWERS: I know he's been in at least three or
13 four different positions since. Whether you consider that
14 continuous or not, they are not the same level of skill.

15 THE COURT: Have you deposed him yet?

16 MR. POSSIDENTE: Yes, we have. We took his deposition
17 in 2013, as a matter of fact.

18 THE COURT: Is there anything in that deposition that
19 shows that he was not paid in the fashion that has just been
20 described? When he worked an additional day at the request of
21 his employer, he was given additional compensation?

22 MR. POWERS: That's correct. The case citation he
23 refers to refers to the contractual agreement.

24 THE COURT: Excuse me?

25 MR. POWERS: The contractual arrangement. That was

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 15 of 28
F56rrivc

14

1 not the contractual arrangement. That was not the agreement.

2 THE COURT: You think nobody can ever be an exempt
3 employee without agreeing in a contract that he is?

4 MR. POWERS: No. I think that to make an exempt
5 employee continue to be exempt when you pay him different
6 rates --

7 THE COURT: Not different rates but different amounts.

8 MR. POWERS: Different amounts based on the number of
9 days.

10 THE COURT: That is entirely different from different
11 rates.

12 MR. POWERS: Right.

13 THE COURT: The rates are not different when you do
14 that.

15 MR. POWERS: OK. They are paying him on a daily rate,
16 but there is no agreement to that effect.

17 THE COURT: Where is the language that says if he is
18 paid by the day?

19 MR. POSSIDENTE: In the C.F.R., your Honor?

20 THE COURT: Yes.

21 MR. POSSIDENTE: The C.F.R. says, "An employer may
22 provide an exempt employee with additional compensation without
23 losing the exemption or violating the salary basis requirement
24 if the employment arrangement also includes a guarantee of at
25 least the minimum weekly required amount paid on a salary

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 16 of 28
F56rrivc

15

1 basis." That is from the C.F.R.

2 I see nothing in there that says anything about a
3 contractual arrangement. It is an employment arrangement which
4 is simply I hired you and I will pay you a salary. In Mr.
5 Rivera's case it ranged from something like \$800 to 12, \$1300 a
6 week. In addition to that, if I ask you to work an additional
7 day, I will then pay you some additional form of money. In
8 this case, Zaro's chose, permissibly under the C.F.R., to pay
9 him one-fifth of his salary.

10 THE COURT: Why does that change him from being a
11 salaried employee or exempt employee?

12 MR. POWERS: Again, the language he just referred to
13 specifically talked about a guarantee in the employment
14 arrangement.

15 THE COURT: What is that?

16 MR. POSSIDENTE: I guess what he is talking about is
17 if the employment arrangement also includes a guarantee of at
18 least the weekly required amount paid on a salary basis. I
19 think the plain language of that means if he is paid his
20 minimum weekly salary regardless of how many hours a week he
21 works and is also paid extra, it doesn't upset his exemption.

22 THE COURT: The fact that he is exempt.

23 MR. POSSIDENTE: Exactly. Here he was absolutely paid
24 his minimum salary every week.

25 THE COURT: You are not claiming that he was not given

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 17 of 28
F56rrivc

16

1 the amount of money he was entitled to?

2 MR. POWERS: That's the issue in the case, whether he
3 was given the money he was entitled to.

4 THE COURT: You are the plaintiff here. What is it
5 you are claiming he was entitled to?

6 MR. POWERS: I'm claiming that he was entitled to
7 overtime because his employment arrangement guaranteed --

8 THE COURT: Let's pick a day. Point out to me what he
9 should have received for that day.

10 MR. POWERS: My argument is that if his employment
11 arrangement had him paid on a daily basis, in other words,
12 whatever, \$70 a day, if he worked 6 days he got 1300; if he
13 worked 7 days, he got 1600.

14 MR. POSSIDENTE: Which is fine because if he worked 5
15 days, to use the example, if he worked 5 days, he got 1300, if
16 he worked 4 or 3 or 2, he got 1300. If he worked 6 or 7, he
17 got extra. That's how he was paid, and that is totally
18 permissible under the C.F.R. That is the distinction we have
19 here. It is not a day rate, because the number didn't go down,
20 it only went up.

21 The C.F.R. allows that distinction to survive and
22 allows an exempt employee to be incentivized to work above and
23 beyond what his normal salary is in exchange for additional
24 compensation, which makes sense from an employment perspective.

25 If I have an employee who is doing a good job as an

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 18 of 28
F56rrivc

17

1 employee and I would like him to work more hours, beyond his
2 salary basis, it would make total sense for me to say to him
3 and would be fair for me to say to him, I'd like you to work
4 more and I'll compensate you above and beyond your salary. But
5 if he suddenly falls sick for two days with a cold and can't
6 report in, the salary then isn't docked down; it still stays as
7 a salary basis.

8 THE COURT: There was no docking of his salary, is
9 that right?

10 MR. POWERS: He worked six or seven hours a day, other
11 than vacation, his entire period.

12 MR. POSSIDENTE: And the vacation was --

13 THE COURT: Less than eight hours a day?

14 MR. POWERS: No. He worked basically 72 to 80 hours a
15 week for 5 years.

16 THE COURT: I'm not talking about a week. I'm talking
17 about per day.

18 MR. POWERS: He worked between 10 and 12 hours a day.

19 THE COURT: Do you agree with that?

20 MR. POSSIDENTE: I don't know. There has been no
21 evidence proffered. As an exempt employee, I don't believe we
22 had him clock in and clock out and kept time records. He is an
23 exempt employee. If he is a salaried employee -- I'm a salary
24 employed at my firm. If I work 70 hours a week, I work 70
25 hours a week. If I work 30 hours a week, I work 30 hours a

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 19 of 28
F56rrivc

18

1 week.

2 That's the whole point of the exemption. You are paid
3 an amount. If you happen to work 20 or 80 hours, you are still
4 paid the amount. That's what Mr. Rivera was paid. I don't
5 know how much he worked. I think he testified --

6 THE COURT: Is there any evidence that he worked more
7 than 8 hours a day?

8 MR. POWERS: I don't have it in front of me, but I'm
9 pretty certain his testimony at the deposition was that he
10 worked 70, 80 hours a week every week.

11 THE COURT: That was what he did regularly?

12 MR. POWERS: Yes.

13 THE COURT: That was not by the hour, that was by the
14 day?

15 MR. POWERS: By the week. He was working basically 10
16 to 12 hours a day every day that he was there while he was
17 employed.

18 THE COURT: He did that over a period of time, so that
19 was his regular workday?

20 MR. POWERS: Yes.

21 THE COURT: He started at what hour?

22 MR. POWERS: He started at, I believe, 2:00 or 3:00 in
23 the morning, and he worked until 1:00 or 2:00 in the afternoon.

24 THE COURT: Do you know who chose the hour he started?

25 MR. POWERS: I suspect he was told --

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 20 of 28
F56rrivc

19

1 THE COURT: I don't want to know what you suspect.

2 MR. POWERS: I don't know.

3 THE COURT: There is no evidence of that, is that what
4 you are telling me is this.

5 MR. POWERS: There is no evidence at this point. When
6 I take the deposition, I'm sure the --

7 THE COURT: You don't depose your own client.

8 MR. POWERS: No. I'm say saying when I take the
9 deposition of the defendant, certainly that is a question I
10 will ask him.

11 THE COURT: Why have you sat on this case for more
12 than a year?

13 MR. POWERS: I had some rather unfortunate personal
14 problems, your Honor, which I could tell you. I would prefer
15 not to.

16 THE COURT: You never during that year wrote to say
17 that I do not wish to have this case prosecuted, I am just not
18 in a position to pay attention to it?

19 MR. POWERS: I didn't disclose that to anybody.

20 THE COURT: But you agree you have not prosecuted this
21 case up to today?

22 MR. POWERS: That's correct, I agree with that.

23 THE COURT: Why should I not dismiss it on that
24 ground, for failure to prosecute?

25 MR. POWERS: I would assume that the Court would

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 21 of 28
F56rrivc

20

1 rather -- if counsel is correct in his analysis of the law,
2 then let's dismiss it on the merits as opposed to --

3 THE COURT: Why? Why shouldn't I, as happened,
4 dismiss for failure to prosecute?

5 MR. POWERS: My client appeared for the deposition.
6 We have received discovery. There is not that much to do to
7 finish off discovery.

8 THE COURT: I don't know what you mean. In any event,
9 you want to move to dismiss, move for summary judgment, is that
10 right?

11 MR. POSSIDENTE: I would take guidance from your
12 Honor. I would probably move to's dismiss for failure to
13 prosecute grounds or, in the alternative, move for summary
14 judgment. I'd take guidance from how your Honor would like to
15 proceed on that. We certainly think the case is dismissible on
16 either ground.

17 THE COURT: When was the answer filed?

18 MR. POSSIDENTE: April 2013.

19 THE COURT: There was no answer filed in this case --

20 MR. POSSIDENTE: No, no, the answer to the complaint,
21 April 2013 it was filed.

22 THE COURT: I see. So it really was defaulted?

23 MR. POSSIDENTE: I'm sorry?

24 THE COURT: The answer to the complaint was due within
25 a period of time under the rules.

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 22 of 28
F56rrivc

21

1 MR. POSSIDENTE: Yes. The answer was filed
2 appropriately.

3 THE COURT: Was it timely filed?

4 MR. POSSIDENTE: I'm sorry. I understand. We sought
5 and received an extension from the Court to be able to file in
6 April 2013, and we filed timely within the confines of that
7 extension.

8 THE COURT: I think at this point you should move for
9 summary judgment. For that purpose, as you know, you have to
10 file a statement of undisputed facts for which you have
11 evidence under the rules.

12 MR. POSSIDENTE: Where should we make that motion,
13 your Honor?

14 THE COURT: I think that is the most orderly way the
15 proceed here unless I dismiss for failure to prosecute.

16 MR. POSSIDENTE: Should we move in the alternative for
17 failure to prosecute, your Honor? Where we are, as you
18 correctly pointed out, there has been no prosecution by the
19 plaintiff.

20 THE COURT: You should be able in that case to seek
21 summary judgment, isn't that right?

22 MR. POSSIDENTE: In this instance, yes, we can seek
23 summary judgment.

24 THE COURT: You have discovery which you can use in
25 that regard?

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 23 of 28
F56rrivc

22

1 MR. POSSIDENTE: Correct.

2 THE COURT: I think that is probably the most orderly
3 way to proceed. I do require a pre-motion conference, which is
4 what I considered this to be, for summary judgment.

5 During that whole time you did not write to me and say
6 for extraordinary reasons we need to delay the movement of this
7 case.

8 MR. POWERS: That is correct, your Honor.

9 THE COURT: It's a very risky way to proceed when you
10 are the plaintiff.

11 MR. POWERS: I understand that, your Honor.

12 THE COURT: Very well.

13 MR. POSSIDENTE: Is there a date certain by which we
14 should plan to move for summary judgment, your Honor?

15 THE COURT: You're talking about the return date?

16 MR. POSSIDENTE: Yes.

17 THE COURT: Not the date of the motion.

18 MR. POSSIDENTE: Yes. Or should we consult and enter
19 into a briefing schedule with a return date?

20 THE COURT: I don't trust briefing schedules in this
21 case. What is a week from Thursday? Is there any reason why
22 you shouldn't make it returnable on May 14th? I hear oral
23 argument on all motions, and you have to make the motion
24 returnable on a date certain under my rules.

25 MR. POSSIDENTE: Yes, we can make it by then.

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 24 of 28
F56rrivc

23

1 THE COURT: That would be the return date. You will
2 say please take notice that on such and such date you will do
3 whatever. I have rules on all of this. My rules provide when
4 you have to respond on paper and you both have to appear on the
5 return date. I hear oral argument on the return date.

6 Is that a copy of my rules, Michael?

7 THE CLERK: Yes.

8 THE COURT: Thank you.

9 You received that when you filed the case. The
10 clerk's office gave you a copy of my rules.

11 MR. POWERS: Correct.

12 MR. POSSIDENTE: I guess your Honor is saying I should
13 file the notice of motion --

14 THE COURT: Returnable two weeks from tomorrow. All
15 right, we'll make it two weeks. May 21st, that's a Thursday.
16 I'm going to be away that day.

17 MR. POWERS: On this schedule he would have to make it
18 22 days before the return date.

19 THE COURT: I think it should be made returnable May
20 20th, which is two weeks from today. How much time did you say
21 you have to respond?

22 MR. POWERS: 22 days before the return date. Then my
23 papers are due the week before the return date, one week
24 before.

25 THE COURT: Correct. Your papers are due the week

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 25 of 28
F56rrivc

24

1 before the return date, and I will hear you both on the return
2 date for oral argument at 11:30 in the morning. Very well.

3 MR. POWERS: Your Honor, I am not trying to be
4 difficult, but let's assume that he got his papers ready, say,
5 even by Friday. Under these rules he wouldn't be able to make
6 the return date until 22 days from that day.

7 THE COURT: Isn't that what we have here?

8 MR. POWERS: No. If you make it the 20th, that's two
9 weeks from today. I would have to respond by next Wednesday,
10 and I don't even have his papers yet. Your rules basically
11 contemplate I have 15 days to respond to him.

12 THE COURT: Correct. What is 22 days?

13 MR. POWERS: 22 days from today is the 28th.

14 MR. POSSIDENTE: Which is Memorial Day, I think.

15 MR. POWERS: Which, if he got me the papers today, I
16 doubt I would be able to do anyway.

17 THE COURT: Certainly not. And I'm not trying to do
18 anything extraordinary. By now I would think that you probably
19 can make your motion a day earlier.

20 MR. POSSIDENTE: File my papers on the 19th?

21 THE COURT: Serve them, not file them.

22 MR. POSSIDENTE: Serve them on the 19th.

23 THE COURT: Then you will respond by no later than the
24 21st. That will be the return date. I will hear oral argument
25 on the 21st at 11:00. That's what we will to. I will hear you

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 26 of 28
F56rrivc

25

1 on the 21st of May.

2 MR. POSSIDENTE: At 11:30, your Honor?

3 THE COURT: At 11:30. Your notice has to be served by
4 whatever I have on my rules there, notice of motion.

5 MR. POSSIDENTE: As I understand it, I'm to serve my
6 brief and 56.1 on the 19th, he is to oppose on the 21st, and we
7 are to appear for argument on the 21st as well at 11:30?

8 THE COURT: No. There is something wrong. He has a
9 week to respond.

10 MR. POWERS: I would have to respond by the 14th of
11 June.

12 THE COURT: How long from now is the 14th of May?

13 MR. POWERS: The 14th of may is next week.

14 MR. POSSIDENTE: It's just nine days, eight days.

15 THE COURT: Then you are going to have it returnable
16 on the 21st. I can make it returnable on the 27th. I want to
17 hear oral argument. It's been so dilatory that it is
18 disturbing to have to put it over more. But since my rules are
19 really based on the notion that I hear motions on Thursdays --
20 I'm shown that you have to make it returnable on June 4th.
21 That's when I will hear oral argument, on June 4th at 11:30.
22 The responsive papers have to be filed by the 21st of May.

23 MR. POSSIDENTE: So we should file on May 15, your
24 Honor?

25 THE COURT: Yes, you should file your motion on May

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 27 of 28
F56rrivc

26

1 15th, Thursday. You may serve and file your papers on May
2 15th. The motion should be returnable on Thursday, June 4th.
3 The responsive papers should be served and filed by the 22nd.
4 I will hear oral argument on June 4th.

5 MR. POWERS: The problem with that date, your Honor,
6 is that technically under your rules I'm supposed to get 15
7 days to respond, and that's only seven days.

8 THE COURT: No, it's not, it's twice seven.

9 MR. POWERS: No. He is filing on the 15th. The 22nd
10 is seven days after the 15th. My response would be May 30th.
11 If you want to hear it on the 4th, my papers would be due a
12 week before that.

13 THE COURT: Yes. The week before the 4th of June
14 would be May 28th.

15 MR. POWERS: Technically, he should give me the papers
16 by the 13th.

17 MR. POSSIDENTE: Your Honor, the problem with that
18 becomes it starts to short-change me, who has not been the
19 dilatory party here.

20 THE COURT: That's quite right.

21 MR. POSSIDENTE: I have been the party here who has
22 complied with and followed the rules. To the extent that there
23 is going to be a short-changing on papers here, it should not
24 go to the defendants.

25 THE COURT: I agree. In any event, it is not short-

Case 1:13-cv-00379-MGC Document 11-1 Filed 05/15/15 Page 28 of 28
F56rrivc

27

1 changing. You are going to make your motion returnable on June
2 4th at 11:30 in the morning.

3 MR. POSSIDENTE: OK.

4 THE COURT: May 15th should be when your motion is
5 made, the plaintiff must respond by May 29th, and I will hear
6 both of you on the 4th of June. That gives everybody the
7 amount of time they should have under my rules more or less.
8 You are actually getting more time than my rules provide.

9 MR. POWERS: Actually, I'm getting a day less, but I
10 don't have a problem with that.

11 THE COURT: Good. That's what we will do. You will
12 both file your papers in accordance with that. Let's review
13 the bidding. Let's make sure you know when you are due.

14 MR. POSSIDENTE: We are filing our opening brief and
15 56.1 on the 15th. Plaintiff will file on the 29th. And we
16 will appear for oral argument on June 4th.

17 THE COURT: Excellent. I look forward to receiving
18 your papers. Although, the truth is I should dismiss for
19 failure to prosecute.

20 MR. POSSIDENTE: We agree, for what it is worth.

21 THE COURT: It is very troublesome when a plaintiff
22 sues and then just disappears, which is what happened here.
23 Good luck to everybody.

24 (Adjourned)

25

Exhibit B

A39

Case 1:13-cv-00379-MGC Document 11-2 Filed 05/15/15 Page 2 of 2

ZARO'S BREAD BASKET

PERSONNEL PROFILE SHEET

FOR OFFICE USE ONLY

Store 41ST Date 7-25-07 I.D. # 14026
 Requested by Adele Rivera Manager Approved by [Signature] Supervisor [Redacted]
 Employee's Name Louis Rivera S.S. # [Redacted]

EMPLOYMENT DATA

Address [Redacted] Phone # [Redacted]
 Birth Date [Redacted] Date Hired 7-23-07 Job Title COMMISSARY MANAGER
☒ Day Shift ☐ Night Shift ☐ Part time ☒ Full time Hrly [Redacted] Wk [Redacted] Salary \$850/WK
 In case of emergency: Name Adele Rivera Phone # [Redacted]
 Attach W4 Address Same as above
19 Relation Wife
☒ Polygraph Waiver ☒ Male ☐ Female ☐ Caucasian ☐ Hispanic ☐ Asian ☐ American Indian ☐ Black ☐ Other
☐ Rules & Regulations ☐ Application ☐ Working Papers

CHANGE NOTICE

Transfer: From [Redacted] To [Redacted]
 Salary: Present [Redacted] Increase [Redacted] Hourly [Redacted] F/T [Redacted]
 Job Title: From [Redacted] To [Redacted]
 Home Address [Redacted] Phone # [Redacted]
 Effective Date [Redacted] Change of Withholding Status [Redacted]

DEDUCTIONS

Tee Shirts [Redacted] Badges [Redacted] Aprons [Redacted] Hats [Redacted]

LEAVE TIME

Check Appropriate Box:

- ☐ Funeral
☐ Jury Duty
☐ Personal Holiday

- ☐ Sick Days (If available, attach Dr. note)
☐ Vacation

Day(s) Taken [Redacted] Week(s) Taken [Redacted] (week ending date) [Redacted]

TERMINATION

Check one:

- ☐ Lay Off
☐ Retirement
☐ Voluntary Resignation
☐ Discharged-Reason(Attach Report)

- ☐ Warnings Issued
 Eligible for Rehire: ☐ Yes ☐ No
 Effective Date [Redacted]

CONFIDENTIAL

ANJOST000270

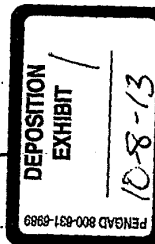


Exhibit C

A41

Case 1:13-cv-00379-MGC Document 11-3 Filed 05/15/15 Page 2 of 10

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	31-1	08/03/2007	07/29/2007	G14		850.00	609.75	00347534	Check	

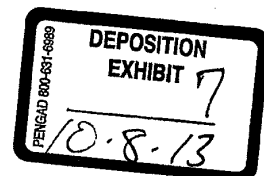
Earnings	Rate	Hours	This Period
Regular			850.00

Gross Pay	850.00
-----------	--------

Deductions**Statutory**

Federal Income Tax	-133.22
Medicare	-12.33
Social Security	-52.70
19 SUI/SDI	-0.60
NY Worked In State Income Tax	-41.40

Net Pay	609.75
---------	--------



CONFIDENTIAL

ANJOST000255

A42

Case 1:13-cv-00379-MGC Document 11-3 Filed 05/15/15 Page 3 of 10

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	32-1	08/10/2007	08/05/2007	G14		850.00	676.22	00347837	Check	

Earnings	Rate	Hours	This Period
Regular			850.00

Gross Pay	850.00
-----------	--------

Deductions	Statutory	
	Federal Income Tax	-70.05
	Medicare	-12.32
	Social Security	-52.70
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-38.11

Net Pay	676.22
---------	--------

CONFIDENTIAL

ANJOST000254

A43

Case 1:13-cv-00379-MGC Document 11-3 Filed 05/15/15 Page 4 of 10

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	33-1	08/17/2007	08/12/2007	G14		850.00	676.21	00348161	Check	

Earnings	Rate	Hours	This Period
Regular			850.00

Gross Pay	850.00
-----------	--------

Deductions**Statutory**

Federal Income Tax	-70.05
Medicare	-12.33
Social Security	-52.70
19 SUI/SDI	-0.60
NY Worked In State Income Tax	-38.11

Net Pay	676.21
---------	--------

CONFIDENTIAL

ANJOST000253

A44

Case 1:13-cv-00379-MGC Document 11-3 Filed 05/15/15 Page 5 of 10

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	34-1	08/24/2007	08/19/2007	G14		850.00	676.22	00348473	Check	

Earnings	Rate	Hours	This Period
Regular			850.00

Gross Pay	\$850.00
-----------	----------

Deductions	Statutory	
	Federal Income Tax	-70.05
	Medicare	-12.32
	Social Security	-52.70
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-38.11

Net Pay	\$676.22
---------	----------

CONFIDENTIAL

ANJOST000252

A45

Case 1:13-cv-00379-MGC Document 11-3 Filed 05/15/15 Page 6 of 10

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Vold
UF-	112990	35-1	08/31/2007	08/26/2007	G14		850.00	676.21	00348787	Check	

Earnings	Rate	Hours	This Period
Regular			850.00

Gross Pay	850.00
-----------	--------

Deductions**Statutory**

Federal Income Tax	-70.05
Medicare	-12.33
Social Security	-52.70
19 SUI/SDI	-0.60
NY Worked in State Income Tax	-38.11

Net Pay	676.21
---------	--------

CONFIDENTIAL

ANJOST000251

A46

Case 1:13-cv-00379-MGC Document 11-3 Filed 05/15/15 Page 7 of 10

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	36-1	09/07/2007	09/02/2007	G14		850.00	676.22	00349101	Check	

Earnings	Rate	Hours	This Period
Regular			850.00

Gross Pay	850.00
-----------	--------

Deductions	Statutory	
	Federal Income Tax	-70.05
	Medicare	-12.32
	Social Security	-52.70
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-38.11

Net Pay	676.22
---------	--------

CONFIDENTIAL

ANJOST000250

A47

Case 1:13-cv-00379-MGC Document 11-3 Filed 05/15/15 Page 8 of 10

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	37-1	09/14/2007	09/09/2007	G14		850.00	676.21	00349428	Check	

Earnings	Rate	Hours	This Period
Regular			850.00

Gross Pay	850.00
-----------	--------

Deductions**Statutory**

Federal Income Tax	-70.05
Medicare	-12.33
Social Security	-52.70
19 SUI/SDI	-0.60
NY Worked In State Income Tax	-38.11

Net Pay	676.21
---------	--------

CONFIDENTIAL

ANJOST000249

A48

Case 1:13-cv-00379-MGC Document 11-3 Filed 05/15/15 Page 9 of 10

Earnings Statement**Louis Rivera**

[REDACTED]
[REDACTED]
[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	38-1	09/21/2007	09/16/2007	G14		850.00	676.22	00349743	Check	

Earnings	Rate	Hours	This Period
Regular			850.00

GROSS PAY: 850.00

Deductions**Statutory**

Federal Income Tax	-70.05
Medicare	-12.32
Social Security	-52.70
19 SUI/SDI	-0.60
NY Worked In State Income Tax	-38.11

NET PAY: 676.22

CONFIDENTIAL

ANJOST000248

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	39-1	09/28/2007	09/23/2007	G14		850.00	676.21	00350072	Check	

Earnings	Rate	Hours	This Period
Regular			850.00

GROSS PAY	\$860.00
-----------	----------

Deductions	Statutory	
	Federal Income Tax	-70.05
	Medicare	-12.33
	Social Security	-52.70
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-38.11

Net Pay: \$576

Exhibit D

A51

Case 1:13-cv-00379-MGC Document 11-4 Filed 05/15/15 Page 2 of 2

ZARO'S BREAD BASKET

PERSONNEL PROFILE SHEET

FOR OFFICE USE ONLY

I.D. # _____

for p/r use only

Store _____ Date _____

Requested by _____

Manager

Approved by _____

Supervisor

Employee's Name

Louis Rivera

S.S. # _____

EMPLOYMENT DATA

Address _____ Phone # _____

Birth Date _____ Date Hired _____ Job Title _____

☐ Day Shift ☐ Night Shift ☐ Part time ☐ Full time Hrly _____ Wk _____ Salary _____

In case of emergency: Name _____ Phone # _____

Attach _____

Address _____

☐ W4☐ I9☐ Polygraph Waiver☐ Rules & Regulations☐ Application☐ Working Papers

Relation _____

☐ Male ☐ Female ☐ Caucasian ☐ Hispanic ☐ Asian ☐ American Indian ☐ Black ☐ Other

CHANGE NOTICE

Transfer: From _____ To _____

Salary: Present *1207* Increase *170* Hourly _____ F/T _____ P/T _____ Salary *1377*

Job Title: From _____ To _____

Home Address _____ Phone # _____

Effective Date _____ Change of Withholding Status _____

DEDUCTIONS

Tee Shirts _____ Badges _____ Aprons _____ Hats _____

LEAVE TIME

Check Appropriate Box:

☐ Funeral☐ Jury Duty☐ Personal Holiday☐ Sick Days (If available, attach Dr.'s note)☐ Vacation

Day(s) Taken _____ Week(s) Taken _____ (week ending date) _____

TERMINATION

Check one:

☐ Lay Off☐ Retirement☐ Voluntary Resignation☐ Discharged-Reason(Attach Report)☐ Warnings IssuedEligible for Rehire: ☐ Yes ☐ No

_____ Effective Date

CONFIDENTIAL

ANJOST000282

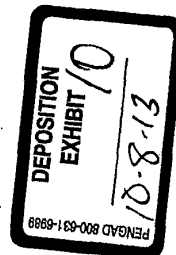


Exhibit E

A53

Case 1:13-cv-00379-MGC Document 11-5 Filed 05/15/15 Page 2 of 13

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	40-1	10/05/2007	09/30/2007	G14		1,097.00	850.36	00350415	Check	

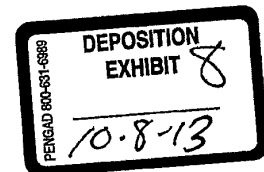
Earnings	Rate	Hours	This Period
Regular			1,097.00

Gross Pay	1,097.00
-----------	----------

Deductions**Statutory**

Federal Income Tax	-107.10
Medicare	-15.90
Social Security	-68.01
19 SUI/SDI	-0.60
NY Worked In State Income Tax	-55.03

Net Pay	850.36
---------	--------



CONFIDENTIAL

ANJOST000246

A54

Case 1:13-cv-00379-MGC Document 11-5 Filed 05/15/15 Page 3 of 13

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	41-1	10/12/2007	10/07/2007	G14		1,097.00	850.34	00351087	Check	

Earnings	Rate	Hours	This Period
Regular			1,097.00

Gross Pay	1,097.00
-----------	----------

Deductions**Statutory**

Federal Income Tax	-107.10
Medicare	-15.91
Social Security	-68.02
19 SUI/SDI	-0.60
NY Worked In State Income Tax	-55.03

Net Pay	850.34
---------	--------

CONFIDENTIAL

ANJOST000245

A55

Case 1:13-cv-00379-MGC Document 11-5 Filed 05/15/15 Page 4 of 13

Earnings Statement
Louis Rivera

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	42-1	10/19/2007	10/14/2007	G14		1,097.00	850.36	00351412	Check	

Earnings	Rate	Hours	This Period
Regular			1,097.00

Gross Pay	1,097.00
-----------	----------

Deductions	Statutory	
	Federal Income Tax	-107.10
	Medicare	-15.90
	Social Security	-68.01
	19 SU/SDI	-0.60
	NY Worked In State Income Tax	-55.03

Net Pay	850.36
---------	--------

CONFIDENTIAL

ANJOST000244

A56

Case 1:13-cv-00379-MGC Document 11-5 Filed 05/15/15 Page 5 of 13

Earnings Statement
Louis Rivera

[REDACTED]
[REDACTED]
[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	43-1	10/26/2007	10/21/2007	G14		1,097.00	850.34	00351744	Check	

Earnings	Rate	Hours	This Period
Regular			1,097.00

Gross Pay	1,097.00
-----------	----------

Deductions	Statutory	
	Federal Income Tax	-107.10
	Medicare	-15.91
	Social Security	-68.02
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-55.03

Net Pay	850.34
---------	--------

CONFIDENTIAL

ANJOST000243

A57

Case 1:13-cv-00379-MGC Document 11-5 Filed 05/15/15 Page 6 of 13

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	44-1	11/02/2007	10/28/2007	G14		1,097.00	850.35	00352065	Check	

Earnings	Rate	Hours	This Period
Regular			1,097.00

Gross Pay	1,097.00
-----------	----------

Deductions	Statutory	
	Federal Income Tax	-107.10
	Medicare	-15.91
	Social Security	-68.01
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-55.03

Net Pay	850.35
---------	--------

CONFIDENTIAL

ANJOST000242

A58

Case 1:13-cv-00379-MGC Document 11-5 Filed 05/15/15 Page 7 of 13

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	45-1	11/09/2007	11/04/2007	G14		1,097.00	850.36	00352390	Check	

Earnings	Rate	Hours	This Period
Regular			1,097.00

GROSS PAY	\$1,097.00
-----------	------------

Deductions	Statutory	
	Federal Income Tax	-107.10
	Medicare	-15.90
	Social Security	-68.01
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-55.03

NET PAY	\$850.36
---------	----------

CONFIDENTIAL

ANJOST000241

A59

Case 1:13-cv-00379-MGC Document 11-5 Filed 05/15/15 Page 8 of 13

Earnings Statement
Louis Rivera

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	46-1	11/16/2007	11/11/2007	G14		1,097.00	850.34	00352718	Check	

Earnings	Rate	Hours	This Period
Regular			1,097.00

GROSS PAY	1,097.00
-----------	----------

Deductions	Statutory	
	Federal Income Tax	-107.10
	Medicare	-15.91
	Social Security	-68.02
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-55.03

Net Pay	850.34
---------	--------

CONFIDENTIAL

ANJOST000240

A60

Case 1:13-cv-00379-MGC Document 11-5 Filed 05/15/15 Page 9 of 13

Earnings Statement
Louis Rivera

[REDACTED]
[REDACTED]
[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	47-1	11/23/2007	11/18/2007	G14		1,097.00	850.35	00353043	Check	

Earnings	Rate	Hours	This Period
Regular			1,097.00

Gross Pay 1,097.00

Deductions	Statutory	
	Federal Income Tax	-107.10
	Medicare	-15.91
	Social Security	-68.01
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-55.03

Net Pay 850.35

CONFIDENTIAL

ANJOST000239

A61

Case 1:13-cv-00379-MGC Document 11-5 Filed 05/15/15 Page 10 of 13

Earnings Statement**Louis Rivera**

[REDACTED]
 [REDACTED]
 [REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	48-1	11/30/2007	11/25/2007	G14		1,316.40	1,005.03	00353372	Check	

Earnings	Rate	Hours	This Period
Regular			1,097.00
Holiday		0.00	219.40
Gross Pay			1,316.40

Deductions	Statutory	
	Federal Income Tax	-140.01
	Medicare	-19.08
	Social Security	-81.62
	19 SU/SDI	-0.60
	NY Worked In State Income Tax	-70.06
Net Pay		1,005.03

CONFIDENTIAL

ANJOST000238

A62

Case 1:13-cv-00379-MGC Document 11-5 Filed 05/15/15 Page 11 of 13

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	49-1	12/07/2007	12/02/2007	G14		1,097.00	850.35	00363701	Check	

Earnings	Rate	Hours	This Period
Regular			1,097.00

Gross Pay: \$1,097.00

Deductions	Statutory	
	Federal Income Tax	-107.10
	Medicare	-15.91
	Social Security	-68.01
	19 SUI/SDI	-0.60
	NY Worked in State Income Tax	-55.03

Net Pay: \$850.35

CONFIDENTIAL

ANJOST000237

A63

Case 1:13-cv-00379-MGC Document 11-5 Filed 05/15/15 Page 12 of 13

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	50-1	12/14/2007	12/09/2007	G14		1,097.00	850.34	00354024	Check	

Earnings	Rate	Hours	This Period
Regular			1,097.00

Gross Pay	1,097.00
-----------	----------

Deductions**Statutory**

Federal Income Tax	-107.10
Medicare	-15.91
Social Security	-68.02
19 SUI/SDI	-0.60
NY Worked In State Income Tax	-55.03

Net Pay	850.34
---------	--------

CONFIDENTIAL

ANJOST000236

A64

Case 1:13-cv-00379-MGC Document 11-5 Filed 05/15/15 Page 13 of 13

Earnings Statement**Louis Rivera**

[REDACTED]
[REDACTED]
[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	51-1	12/21/2007	12/16/2007	G14		1,316.40	1,005.03	00354349	Check	

Earnings	Rate	Hours	This Period
Regular			1,097.00
Blank		0.00	219.40
Gross Pay			\$1,316.40

Deductions	Statutory	
	Federal Income Tax	-140.01
	Medicare	-19.09
	Social Security	-81.61
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-70.06

Net Pay	\$1,005.03
----------------	-------------------

CONFIDENTIAL

ANJOST000235

A65

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 1 of 22

Exhibit F

A66

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 2 of 22

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

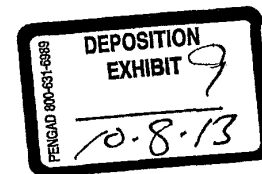
[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	31-1	08/01/2008	07/27/2008	G14		1,448.40	1,098.86	00364774	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			1,448.40

Deductions	Statutory	
	Federal Income Tax	-159.04
	Medicare	-21.00
	Social Security	-89.80
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-79.10

Net Pay	1,098.86
----------------	-----------------



CONFIDENTIAL

ANJOST000203

A67

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 3 of 22

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	32-1	08/08/2008	08/03/2008	G14		1,448.40	1,098.86	00365103	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			1,448.40

Deductions	Statutory	
	Federal Income Tax	-159.04
	Medicare	-21.00
	Social Security	-89.80
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-79.10

Net Pay	1,098.86
----------------	-----------------

CONFIDENTIAL

ANJOST000202

A68

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 4 of 22

Earnings Statement
Louis Rivera

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	33-1	08/15/2008	08/10/2008	G14		1,448.40	1,098.86	00365435	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			\$1,448.40

Deductions	Statutory	
	Federal Income Tax	-159.04
	Medicare	-21.00
	Social Security	-89.80
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-79.10
Net Pay		\$1,098.86

CONFIDENTIAL

ANJOST000201

A69

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 5 of 22

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	34-1	08/22/2008	08/17/2008	G14		1,448.40	1,098.86	00365770	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			\$1,448.40

Deductions	Statutory	
	Federal Income Tax	-159.04
	Medicare	-21.00
	Social Security	-89.80
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-79.10
Net Pay		\$1,098.86

CONFIDENTIAL

ANJOST000200

A70

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 6 of 22

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	35-1	08/29/2008	08/24/2008	G14		1,448.40	1,098.86	00366100	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			1,448.40

Deductions	Statutory	
	Federal Income Tax	-159.04
	Medicare	-21.00
	Social Security	-89.80
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-79.10

Net Pay	1,098.86
----------------	-----------------

CONFIDENTIAL

ANJOST000199

A71

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 7 of 22

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	36-1	09/05/2008	08/31/2008	G14		1,448.40	1,098.85	00366423	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			\$1,448.40

Deductions	Statutory	
	Federal Income Tax	-159.04
	Medicare	-21.01
	Social Security	-89.80
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-79.10

Net Pay	\$1,098.85
----------------	-------------------

CONFIDENTIAL

ANJOST000198

A72

Case 1:13-cv-00379-MGC --Document 11-6 Filed 05/15/15 Page 8 of 22

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vor	Void
UF-	112990	37-1	09/12/2008	09/07/2008	G14		1,689.80	1,252.28	00366736	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Holiday		0.00	241.40

Gross Pay	1,689.80
-----------	----------

Deductions	Statutory	
	Federal Income Tax	-212.02
	Medicare	-24.50
	Social Security	-104.77
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-95.63

Net Pay	1,252.28
---------	----------

CONFIDENTIAL

ANJOST000197

A73

Case 1:13-cv-00379-MGC -- Document 11-6 -- Filed 05/15/15 -- Page 9 of 22

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	38-1	09/19/2008	09/14/2008	G14		1,448.40	1,098.86	00367061	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			1,448.40

Deductions	Statutory	
	Federal Income Tax	-159.04
	Medicare	-21.00
	Social Security	-89.80
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-79.10

Net Pay	1,098.86
----------------	-----------------

CONFIDENTIAL

ANJOST000196

A74

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 10 of 22

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	39-1	09/26/2008	09/21/2008	G14		1,448.40	1,098.86	00367387	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			\$1,448.40

Deductions	Statutory	
	Federal Income Tax	-159.04
	Medicare	-21.00
	Social Security	-69.80
	19 SUI/SDI	-0.60
	NY Worked in State Income Tax	-79.10

Net Pay	\$1,098.86
----------------	-------------------

CONFIDENTIAL

ANJOST000195

A75

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 11 of 22

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	40-1	10/03/2008	09/28/2008	G14		1,207.00	928.68	00367711	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00

Gross Pay 1,207.00

Deductions	Statutory	
	Federal Income Tax	-122.83
	Medicare	-17.50
	Social Security	-74.83
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-62.56

Net Pay 928.68

CONFIDENTIAL

ANJOST000194

A76

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 12 of 22

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	41-1	10/10/2008	10/05/2008	G14		1,448.40	1,098.84	00368029	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			\$1,448.40

Deductions	Statutory	
	Federal Income Tax	-159.04
	Medicare	-21.01
	Social Security	-89.81
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-79.10

Net Pay	\$1,098.84
----------------	-------------------

CONFIDENTIAL

ANJOST000193

A77

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 13 of 22

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	42-1	10/17/2008	10/12/2008	G14		1,448.40	1,098.86	00368345	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			\$1,448.40

Deductions	Statutory	
	Federal Income Tax	-159.04
	Medicare	-21.00
	Social Security	-89.80
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-79.10

Net Pay	\$1,098.86
----------------	-------------------

CONFIDENTIAL

ANJOST000192

A78

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 14 of 22

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	43-1	10/24/2008	10/19/2008	G14		1,448.40	1,098.86	00368662	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			\$1,448.40

Deductions	Statutory	
	Federal Income Tax	-159.04
	Medicare	-21.00
	Social Security	-89.80
	19 SUI/SDI	-0.80
	NY Worked In State Income Tax	-79.10
Net Pay		\$1,098.86

CONFIDENTIAL

ANJOST000191

A79

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 15 of 22

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	44-1	10/31/2008	10/26/2008	G14		1,689.80	1,252.29	00368991	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	482.80
Gross Pay			1,689.80

Deductions	Statutory	
	Federal Income Tax	-212.02
	Medicare	-24.50
	Social Security	-104.76
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-95.63

Net Pay	1,252.29
----------------	-----------------

CONFIDENTIAL

ANJOST000190

A80

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 16 of 22

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	45-1	11/07/2008	11/02/2008	G14		1,448.40	1,098.85	00369321	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			\$1,448.40

Deductions	Statutory	
	Federal Income Tax	-159.04
	Medicare	-21.00
	Social Security	-89.81
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-79.10

Net Pay	\$1,098.85
----------------	-------------------

CONFIDENTIAL

ANJOST000189

A81

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 17 of 22

Earnings Statement**Louis Rivera**

[REDACTED]
[REDACTED]
[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	46-1	11/14/2008	11/09/2008	G14		1,448.40	1,098.86	00369658	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			1,448.40

Deductions	Statutory	
	Federal Income Tax	-169.04
	Medicare	-21.00
	Social Security	-89.80
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-79.10
Net Pay		1,098.86

CONFIDENTIAL

ANJOST000188

A82

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 18 of 22

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	47-1	11/21/2008	11/16/2008	G14		1,448.40	1,098.85	00369997	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			1,448.40

Deductions	Statutory	
	Federal Income Tax	-159.04
	Medicare	-21.01
	Social Security	-89.80
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-79.10

Net Pay	1,098.85
----------------	-----------------

CONFIDENTIAL

ANJOST000187

A83

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 19 of 22

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	48-1	11/28/2008	11/23/2008	G14		1,689.80	1,252.29	00370338	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	482.80
Gross Pay			\$1,689.80

Deductions	Statutory	
	Federal Income Tax	-212.02
	Medicare	-24.50
	Social Security	-104.76
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-95.63
	Net Pay	\$1,252.29

CONFIDENTIAL

ANJOST000186

A84

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 20 of 22

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	49-1	12/05/2008	11/30/2008	G14		1,689.80	1,252.28	00370678	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Holiday		0.00	241.40
Gross Pay			1,689.80

Deductions	Statutory	
	Federal Income Tax	-212.02
	Medicare	-24.50
	Social Security	-104.77
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-95.63
Net Pay		1,252.28

CONFIDENTIAL

ANJOST000185

A85

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 21 of 22

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	50-1	12/12/2008	12/07/2008	G14		1,448.40	1,098.86	00371014	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			1,448.40

Deductions	Statutory	
	Federal Income Tax	-159.04
	Medicare	-21.00
	Social Security	-89.80
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-79.10

Net Pay	\$1,098.86
----------------	-------------------

CONFIDENTIAL

ANJOST000184

A86

Case 1:13-cv-00379-MGC Document 11-6 Filed 05/15/15 Page 22 of 22

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	51-1	12/19/2008	12/14/2008	G14		1,448.40	1,098.86	00371347	Check	

Earnings	Rate	Hours	This Period
Regular			1,207.00
Blank		0.00	241.40
Gross Pay			1,448.40

Deductions	Statutory	
	Federal Income Tax	-159.04
	Medicare	-21.00
	Social Security	-89.80
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-79.10
Net Pay		1,098.86

CONFIDENTIAL

ANJOST000183

Exhibit G

A88

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 2 of 26

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	05-1	02/04/2011	01/30/2011	G14		1,652.40	1,274.87	00406468	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Sick Day		0.00	275.40
Gross Pay			\$1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07
Net Pay		\$1,274.87

CONFIDENTIAL

ANJOST000070



A89

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 3 of 26

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	06-1	02/11/2011	02/06/2011	G14		1,652.40	1,274.87	00406804	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07

Net Pay	1,274.87
----------------	-----------------

CONFIDENTIAL

ANJOST000069

A90

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 4 of 26

Earnings Statement
Louis Rivera

[REDACTED]
[REDACTED]
[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	07-1	02/18/2011	02/13/2011	G14		1,652.40	1,274.86	00407137	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.41
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07
Net Pay		1,274.86

CONFIDENTIAL

ANJOST000068

A91

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	08-1	02/25/2011	02/20/2011	G14		1,652.40	1,274.87	00407472	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SU/SDI	-0.60
	NY Worked In State Income Tax	-93.07
Net Pay		1,274.87

CONFIDENTIAL

ANJOST000067

A92

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 6 of 26

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Vold
UF-	112990	09-1	03/04/2011	02/27/2011	G14		1,652.40	1,274.87	00407800	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07
Net Pay		1,274.87

CONFIDENTIAL

ANJOST000066

A93

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 7 of 26

Earnings Statement
Louis Rivera

[REDACTED]
[REDACTED]
[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	10-1	03/11/2011	03/06/2011	G14		1,652.40	1,274.87	00408147	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
GROSS PAY			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07
NET PAY		1,274.87

CONFIDENTIAL

ANJOST000065

A94

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 8 of 26

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	11-1	03/18/2011	03/13/2011	G14		1,652.40	1,274.87	00408473	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07
Net Pay		1,274.87

CONFIDENTIAL

ANJOST000064

A95

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 9 of 26

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Vold
UF-	112990	12-1	03/25/2011	03/20/2011	G14		1,652.40	1,274.87	00408799	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SU/SDI	-0.60
	NY Worked In State Income Tax	-93.07
Net Pay		1,274.87

CONFIDENTIAL

ANJOST000083

A96

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 10 of 26

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	13-1	04/01/2011	03/27/2011	G14		1,652.40	1,274.87	00409125	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SJWSDI	-0.60
	NY Worked In State Income Tax	-93.07
Net Pay		1,274.87

CONFIDENTIAL

ANJOST000062

A97

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 11 of 26

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	14-1	04/08/2011	04/03/2011	G14		1,652.40	1,274.87	00409451	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07
Net Pay		1,274.87

CONFIDENTIAL

ANJOST000061

A98

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 12 of 26

Earnings Statement**Louis Rivera**

[REDACTED]
[REDACTED]
[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	15-1	04/15/2011	04/10/2011	G14		1,652.40	1,274.87	00409776	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07
Net Pay		1,274.87

CONFIDENTIAL

ANJOST000060

A99

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 13 of 26

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	16-1	04/22/2011	04/17/2011	G14		1,652.40	1,274.87	00410105	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07
Net Pay		1,274.87

CONFIDENTIAL

ANJOST000059

A100

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 14 of 26

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	17-1	04/29/2011	04/24/2011	G14		1,652.40	1,274.87	00410431	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions**Statutory**

Federal Income Tax	-190.50
Medicare	-23.96
Social Security	-69.40
19 SUI/SDI	-0.60
NY Worked In State Income Tax	-93.07

Net Pay

CONFIDENTIAL

ANJOST000058

A101

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 15 of 26

Earnings Statement
Louis Rivera

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	18-1	05/06/2011	05/01/2011	G14		1,652.40	1,274.87	00410753	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07

Net Pay	1,274.87
----------------	-----------------

CONFIDENTIAL

ANJOST000057

A102

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 16 of 26

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	19-1	05/13/2011	05/08/2011	G14		1,927.80	1,446.88	00411080	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	550.80
GROSS PAY			\$1,927.80

Deductions	Statutory	
	Federal Income Tax	-259.35
	Medicare	-27.95
	Social Security	-80.97
	19 SU/SDI	-0.60
	NY Worked In State Income Tax	-112.05

NET PAY **\$1,446.88**

CONFIDENTIAL

ANJOST000056

A103

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 17 of 26

Earnings Statement**Louis Rivera**

[REDACTED]
[REDACTED]
[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	20-1	05/20/2011	05/15/2011	G14		1,652.40	1,274.87	00411395	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
GROSS PAY			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07

NET PAY	1,274.87
----------------	-----------------

CONFIDENTIAL

ANJOST000055

A104

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 18 of 26

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	21-1	05/27/2011	05/22/2011	G14		1,652.40	1,274.87	00411713	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	13 SUWSD	-0.60
	NY Worked In State Income Tax	-93.07
Net Pay		1,274.87

CONFIDENTIAL

ANJOST000054

A105

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 19 of 26

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	22-1	06/03/2011	05/29/2011	G14		1,652.40	1,274.87	00412033	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07
Net Pay		1,274.87

CONFIDENTIAL

ANJOST000053

A106

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 20 of 26

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	23-1	06/10/2011	06/05/2011	G14		1,927.80	1,446.87	00412359	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Holiday		0.00	275.40
Gross Pay			1,927.80

Deductions	Statutory	
	Federal Income Tax	-259.35
	Medicare	-27.96
	Social Security	-80.97
	19 SU/SDI	-0.60
	NY Worked In State Income Tax	-112.05
Net Pay		1,446.87

CONFIDENTIAL

ANJOST000052

A107

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 21 of 26

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	24-1	06/17/2011	06/12/2011	G14		1,652.40	1,274.87	00412684	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.98
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07
Net Pay		1,274.87

CONFIDENTIAL

ANJOST000051

A108

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 22 of 26

Earnings Statement**Louis Rivera**

[REDACTED]

[REDACTED]

[REDACTED]

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	25-1	06/24/2011	06/19/2011	G14		1,652.40	1,274.87	00413020	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07
Net Pay		1,274.87

CONFIDENTIAL

ANJOST000050

A109

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 23 of 26

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	26-1	07/01/2011	06/26/2011	G14		1,652.40	1,274.87	00413346	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
GROSS PAY			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07
NET PAY		1,274.87

CONFIDENTIAL

ANJOST000049

A-110

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 24 of 26

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	27-1	07/08/2011	07/03/2011	G14		1,652.40	1,274.87	00413673	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Gross Pay			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked in State Income Tax	-83.07
Net Pay		1,274.87

CONFIDENTIAL

ANJOST000048

A111

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 25 of 26

Earnings Statement
Louis Rivera

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	28-1	07/15/2011	07/10/2011	G14		1,927.80	1,446.88	00413999	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
Holiday		0.00	275.40
Gross Pay			1,927.80

Deductions	Statutory	
	Federal Income Tax	-259.35
	Medicare	-27.95
	Social Security	-80.97
	19 SU/SDI	-0.60
	NY Worked In State Income Tax	-112.05
Net Pay		1,446.88

CONFIDENTIAL

ANJOST000047

A-112

Case 1:13-cv-00379-MGC Document 11-7 Filed 05/15/15 Page 26 of 26

Earnings Statement**Louis Rivera**

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
UF-	112990	29-1	07/22/2011	07/17/2011	G14		1,652.40	1,274.87	00414321	Check	

Earnings	Rate	Hours	This Period
Regular			1,377.00
Blank		0.00	275.40
GROSS PAY			1,652.40

Deductions	Statutory	
	Federal Income Tax	-190.50
	Medicare	-23.96
	Social Security	-69.40
	19 SUI/SDI	-0.60
	NY Worked In State Income Tax	-93.07
NET PAY		1,274.87

CONFIDENTIAL

ANJOST000046

Exhibit H



New York State Department of Labor
David A. Paterson, Governor
Colleen Gardner, Commissioner

December 7, 2010

[REDACTED]

Re: Request for Opinion
Salary Basis
RO-10-0063

Dear [REDACTED],

This letter is written in response to your letter dated April 21, 2010, in which you inquire whether requiring an employee to use paid vacation, personal, or sick time off for partial day absences would affect that employees "exempt" status. Your letter states that salaried employees would be required to use accumulated leave time for partial days of absence and that once they have exhausted their vacation, personal, and sick leave, they would be paid their salary in full. Since your letter does not provide the specific factual basis under which your question arises, it is assumed that you are inquiring whether the practice of requiring salaried employees to utilize paid vacation, personal, and sick leave would violate the "salary" requirement for the State and federal administrative, professional, and executive exemptions/exceptions to the overtime requirements.

The federal Fair Labor Standards Act and the regulations under the State Minimum Wage Act require that most employees be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half times their regular rate of pay for all hours worked over 40 hours in a workweek. However, these requirements are independent of each other and operate to provide both the U.S. Department of Labor and this Department authority over the enforcement of their respective provisions. It is important to note that the FLSA does not prevent states from enacting wage and overtime laws and regulations that are more beneficial to workers than the FLSA. (See, 29 U.S.C. §218; *Manliguez v. Joseph*, 226 F. Supp.2d 377 (EDNY 2002).)

Tel: (518) 457-4380, Fax: (518) 485-1819
W. Averell Harriman State Office Campus, Bldg. 12, Room 509, Albany, NY 12240

Regulations adopted pursuant to the New York State Minimum Wage Act do contain some overtime requirements that apply to employees who are otherwise exempt from overtime under the FLSA. In order to reach a determination as to whether a job falls under a permitted overtime exemption, the Department may examine both the FLSA and the more stringent provisions of the State Minimum Wage law and orders. Where the criteria in a New York State exception mirror those for an exemption in the FLSA, this Department usually construes the criteria in our regulations in line with those contained in the FLSA, its regulations, and interpretations by the U.S. Department of Labor. However, this Department is not bound by the decisions and interpretations of the U.S. Department of Labor, nor is that Department bound by this or other interpretations issued by this agency.

The New York State Minimum Wage Act generally applies to all individuals who fall within its definition of "employee." (*see*, Labor Law §651 *et seq.*) Section 651 (5) defines "employee" as "any individual employed or permitted to work by an employer in any occupation," but excludes fifteen categories of workers from that definition. (*see*, Labor Law §651(5)(a-o).) Subpart 2.2 of the Minimum Wage Order for Miscellaneous Industries and Occupations (12 NYCRR §142-2.2) provides, in relevant part, that all "employees" must be paid at a rate not less than one and one half times their regular rate of pay subject to the exemptions of the FLSA. Subpart 2.2 also provides that employees exempted under Section 13 of the FLSA must nevertheless be paid overtime but at a rate not less than one and one half times the minimum wage. As alluded to above, this requirement is independent of the overtime requirements contained in the FLSA, which are not incorporated by reference; rather they operate as independent and concurrent requirements for the payment of overtime.

As you appear to be aware, both the FLSA and the State Minimum Wage Act provide exemptions/exceptions from both minimum wage and overtime pay for individuals employed as bona fide executive, administrative, professional, and outside sales employees. To qualify for these exemptions/exceptions, employees generally must meet certain tests regarding their job duties and be paid on a salary basis. While the tests for job duties differ slightly between the FLSA and the State Minimum Wage Act, the State requirement that these employees be paid a salary, notwithstanding any differences in the threshold amount of that salary, is interpreted in line with the regulations explaining the FLSA salary requirement. Those requirements are explained in Federal regulation 29 CFR 541.600 *et seq.* and provide as follows:

An employee will be considered to be paid on a "salary basis" within the meaning of these regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. (29 CFR 541.602(a))

That regulation provides further that subject to several exceptions, "an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked." (29 CFR 541.602(a).)

As relevant to the present inquiry, regulation 29 CFR 651.602(b)(1) provides as follows:

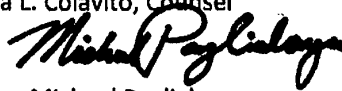
Deductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability. Thus, if an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full-day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence.

Under these regulations reductions in pay for partial day absences violate the salary basis rule, except those occurring in the first or final week of an exempt employee's employment or for unpaid leave under the Family and Medical Leave Act. However, your letter merely states that the employer will require employees utilize their vacation, personal, or sick time for partial day absences and that employees who have exhausted such time will not be subject to any deductions from their pay for partial days worked. Assuming that the requirement to use vacation, personal, or sick leave time for partial day absences is properly enunciated in the employer's employee benefits policy in accordance with Section 198-c of the Labor Law, such a policy would not violate the salary basis rule since the employees in question would receive their full salary regardless of the number of hours worked.

This opinion is based exclusively on the facts and circumstances described in your email and subsequent communication, and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. This opinion cannot be used in connection with any pending private litigation concerning the issue addressed herein. If you have any further questions, please do not hesitate to contact me.

Very truly yours,
Maria L. Colavito, Counsel

By:



Michael Paglialonga
Assistant Attorney I

cc: Carmine Ruberto

A117

Case 1:13-cv-00379-MGC Document 11-9 Filed 05/15/15 Page 1 of 64

Exhibit I

Page 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

L. Rivera
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----x
LOUIS RIVERA,

Plaintiff,

vs. Case No.
13-CV-379
(MGC)
ANJOST CORPORATION and JOSEPH ZARO,

Defendants.

-----x

DEPOSITION OF LOUIS RIVERA
New York, New York
Tuesday, October 8, 2013

Reported by:
THOMAS A. FERNICOLA, RPR
JOB NO. 66219

1 L. Rivera

2
3
4
5
6 Tuesday, October 8, 2013
7 10:00 a.m.
8
9

10
11 DEPOSITION of LOUIS RIVERA, held at the
12 Law Offices of Venable, LLP, 1270 Avenue of the
13 Americas, 24th Floor, New York, New York, before
14 Thomas A. Fernicola, a Registered Professional
15 Reporter and Notary Public of the State of New
16 York.
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

L. Rivera

A P P E A R A N C E S:

THE LAW OFFICE OF ROBERT S. POWERS

Attorneys for Plaintiff

1540 August Road

North Babylon, New York 11703

BY: ROBERT S. POWERS, ESQ.

VENABLE

Attorneys for Defendants

1270 Avenue of the Americas

New York, New York 10020

BY: ADAM G. POSSIDENTE, ESQ.

RAQUEL O. ALVARENGA, ESQ.

1 L. Rivera

2 A. Yes.

3 Q. And this reflects a birthday of
4 7/20/1961.

5 Is that your birthday?

6 A. Yes.

7 Q. It reflects a hire date of
8 7/23/2007; is that correct?

9 Well, the document as written,
10 Mr. Rivera, we can agree that it reflects a
11 hire date of 7/23/2007?

12 A. That's the day they say they hired
13 me, then that's the day they hired me. I
14 remember it was July 4th.

15 Q. Your job title, Mr. Rivera, was
16 Commissary Manager; is that correct?

17 A. Yes.

18 Q. And, Mr. Rivera, if we skip down
19 right below where it says Date Hired, it
20 says -- there's an X next to Full-Time
21 Employee; is that correct?

22 A. Yes. I was a full-time employee.

23 Q. Mr. Rivera, it has emergency contact
24 here, Adell A. Rivera, your wife?

25 A. That's my wife, yes, sir.

1 L. Rivera

2 Q. So the alleged inappropriate
3 behavior, Mr. Rivera, refers to the sexual
4 harassment allegations made by Ms. Nazia that
5 we were just discussing; is that correct?

6 A. I think so.

7 Q. And we can agree, then, Mr. Rivera,
8 that this reflects a suspension from May 17,
9 2012, until the completion of that
10 investigation?

11 A. I think it was on a Tuesday or
12 something.

13 Q. Well, let's refer back to, I guess
14 Exhibit 5, the first employee notice. And
15 then this is the one dated May 16, 2012; is
16 that correct?

17 A. Yes, 5/16.

18 Q. 5/16/2012. And this is the document
19 that reflects the warning, correct, that you
20 were given a warning by Brian Zaro?

21 A. Yes.

22 Q. And then, again, this document is
23 dated 5/16/12; correct?

24 A. Yes.

25 Q. So the next day you knew then John

1 L. Rivera
2 Apgar, based on -- if we refer back to
3 Exhibit 6, John Apgar then informed you that
4 you were being suspended pending an
5 investigation into the allegation?

6 A. Into that, yes.

7 Q. Mr. Rivera, how long did that
8 investigation last?

9 A. Well, I was working. He told me to
10 come to Grand Central and he told me that we
11 have to investigate this, so I have to suspend
12 you.

13 And he called me, I don't know when
14 it was, the date, Wednesday. Then he called
15 me in the coming Monday.

16 Q. So he informed you of the suspension
17 on a Wednesday?

18 A. I think that's the date. I'm not
19 sure.

20 Q. And then he called you in --

21 A. I was working.

22 Q. You were working on that day?

23 A. Yes.

24 Q. How long did the suspension last,
25 Mr. Rivera?

1 L. Rivera

2 A. A couple of days.

3 Q. Were you paid?

4 A. Yes.

5 Q. And what was the result of the
6 investigation?

7 A. He told me to come in Monday morning
8 at 9:00 to Grand Central, where I met John
9 Apgar. So he told me, let's go sit down with
10 Milton Carl and Brian Zaro right next to Track
11 19. And we sat with them and I sat with them.

12 And they told me, due to the
13 investigation, I have to let you go.

14 And I said, John, you're letting me
15 go for no reason, and you guys know very well
16 that I would never do anything like this. You
17 have a camera up there.

18 And, John, remember, I didn't
19 actually quit this job. You gave me the job
20 and you think I'm going to turn around and
21 betray you. You know that I'm right. For
22 some reason this is thrown at me for no
23 reason. I told him that.

24 And he says there is nothing he can
25 do. So when Brian told me to sign a piece of

1 L. Rivera
2 paper, another piece of paper, I said, I'm not
3 signing it. You already caused me to sign two
4 papers. I'm not going to sign whatever.
5 Maybe it was a termination piece of paper or
6 something. I said I'm not going to sign it.

7 So he said, I'm going to pay you for
8 the week, I'm going to pay you for your
9 vacation and whatever else is coming to you.

10 Q. And you were then terminated;
11 correct?

12 A. Yes.

13 Q. And so then we can agree, then,
14 Mr. Rivera, that following this suspension and
15 the investigation into the allegations brought
16 by Ms. Nazia, that the company terminated you
17 based on those allegations; correct?

18 A. Yes.

19 Q. Mr. Rivera, let's turn back to your
20 duties as a commissary manager.

21 We've already established that based
22 on Exhibit 4, that you were supervising
23 between 14 and 15 employees at any one time;
24 correct?

25 A. Uh-huh. Yes.

1 L. Rivera

2 Q. Given that you were the manager,
3 your primary duty was to supervise and manage
4 those employees; is that correct?

5 A. Yes.

6 Q. And you were responsible for
7 directing the work of the employees that you
8 managed; is that correct?

9 A. Yes.

10 Q. Do you recall the names of any of
11 the full-time employees that you were
12 responsible for managing and their job titles?

13 A. They were all workers. Sandwich
14 makers, that's what they were.

15 Q. So what exactly does the commissary
16 do, Mr. Rivera?

17 A. We make sandwiches for all the
18 stores. We prepare salads for all the stores,
19 fruit salads, sandwiches, all that has to do
20 with the baker's side, bagels, danishes, to
21 provide all the stores with the product.

22 Q. So, Mr. Rivera, can you describe the
23 day-to-day tasks that you were responsible for
24 managing?

25 A. What do you mean by that?

1 L. Rivera

2 Q. Take me through a normal day when
3 you were the manager of the commissary.

4 A. I go in at 2:30 in the morning.
5 There's a fax that comes out of the machine
6 that tells you everything that the stores
7 need.

8 So I would take a rack and load up,
9 because we had a truck that comes in at 3:30
10 in the morning. So I would have to load up
11 that truck before 3:30 in the morning or else
12 Zaro's would not get no equipment until 7:00.

13 So I take the fax. The first thing
14 I do in there is take the fax of each store
15 and then take the bins and load up the bins
16 and put a piece of paper what store this
17 belongs to.

18 Anything that belongs to Grand
19 Central was picked up by Grand Central, but we
20 would set it up and they would pick it up from
21 Grand Central since it was around the corner.

22 Q. What did the bins contain?

23 A. Salads, anything that had to do with
24 the salad bar, like cucumbers, olives, bacon
25 bits, walnuts, canned goods, whatever the

1 L. Rivera

2 stores needed to prepare themselves. And
3 that's their first shipment.

4 The soups, they would be loaded up
5 because they would deliver to 21st Street,
6 36th Street, the Bronx, I mean, yes. The
7 Zaro's in Parkchester, 37th Street, and then
8 the Zaro's, some of the other stuff that they
9 ordered.

10 Q. You testified that you started work
11 at 2:30?

12 A. Uh-huh.

13 Q. Did the individuals that you
14 supervised also start work at 2:30?

15 A. No. They start -- only the bakers
16 were there. They go in at 12:00.

17 Q. The bakers arrive at midnight?

18 A. Yes.

19 Q. Were you responsible for supervising
20 the bakers?

21 A. Yes. But when I go in, I said
22 hello, good morning to everybody, and then I
23 would get the fax, because they know I had
24 to -- they were baking for Grand Central and
25 21st Street, that gets picked up first. But I

1 L. Rivera
2 would let them know if they had extra stuff
3 that had to be made and I would tell them.

4 Q. Okay.

5 When did the other employees that
6 you were supervising arrive?

7 A. 5:00.

8 Q. So from 2:30 until 5:00, it was you
9 and the bakers?

10 A. Uh-huh.

11 Q. And then at 5:00, the other
12 sandwich --

13 A. The employees would come in.

14 Q. And what happened when they arrived?

15 A. They start working. They punch
16 their card and they start working. And I
17 would tell them what to make, because I would
18 make a copy and paste it on the wall, and
19 everybody had a certain sandwich to make.

20 Q. So you would, when the people
21 arrived at 5:00 and they punched in, you would
22 instruct all of them to make different
23 products?

24 A. Right. If they would look at the
25 sheet that I wrote, and each one of them would

1 L. Rivera
2 pick out what they want to make. Because
3 everything had to be ready before 7:30.

4 Q. Okay.

5 Mr. Rivera, I just ask you let me
6 finish the question before you answer so that
7 the court reporter doesn't go crazy.

8 Once you had -- once 5:00 hit, the
9 workers arrived and you started, you got them
10 started on making various products, what
11 happened during the rest of your shift?

12 A. Once we finished making the
13 sandwiches and everything?

14 Q. Yes.

15 A. We would prepare for the next day.

16 Q. And what did that involve?

17 A. Chopping vegetables, cooking
18 vegetables, making soups.

19 Q. And, once again, you would instruct
20 the various employees as to their specific
21 tasks?

22 A. Yes. They knew already what they
23 had to be made and what we needed. Like, say,
24 we made on Monday, we made 15 cans of roasted
25 peppers.

1 L. Rivera

2 So we look in the refrigerator and
3 we see, because we have buckets inside the
4 refrigerator. If it was running short, we had
5 to refill it again to make sure that the next
6 day we had enough buckets to send them.

7 Q. Mr. Rivera, how long -- how many
8 hours -- how long was your shift?

9 A. My shift?

10 Q. Yes.

11 A. From 2:00 maybe to 1:00 or 2:00 in
12 the afternoon.

13 Q. And what kind of decisions were you
14 responsible for making while you were the
15 commissary manager?

16 A. Regarding what?

17 Q. Were you given in terms of -- well,
18 let's ask it this way. You would determine
19 yourself which employee would do which task
20 every day?

21 A. They would pick what they wanted to
22 make, as long as everything was made on that
23 list.

24 Q. So you would say to the employees
25 that you were supervising, you would say we

1 L. Rivera

2 need to make X chicken sandwiches?

3 A. Right. And they had a list on the
4 wall that I paste, how many sandwiches, say,
5 they were making turkey and brie, I would add
6 all the stores what they had to make, you
7 know, of that particular sandwiches.

8 Say, it was 50, what store gets 20,
9 what store gets 10, what gets 20, because
10 everything came out in the platters.

11 Q. Now, Mr. Rivera, as the manager, I
12 imagine that you would also make suggestions
13 or recommendations regarding the operation of
14 the commissary; is that right?

15 A. I don't understand.

16 Q. In terms of would you have a hand in
17 sort of setting out if there were better ways
18 to make a sandwich or better policies to more
19 efficiently push the product through, that
20 sort of thing, would you have a role in that?

21 A. Yes. They would know they have to
22 weigh the meat and put it on the sandwich and
23 wrap it up, tag it, and then put it in -- we
24 had different bins, one for 37, one for
25 21st Street, one for all the stores. There

1 L. Rivera

2 was a bin with the number on it.

3 Like 37, we would write 37. We
4 would write another one, 21st Street. And
5 then each bin has a thing, so they would read
6 it.

7 Say, so 27 ordered 10 smoked turkey
8 and brie, then they would get the smoked
9 turkey and brie, the 10. How many Grand
10 Central ordered, I would get the fax for all
11 of them. So I would write down every morning
12 what they had -- how many they had to make.

13 Q. Mr. Rivera, were you responsible for
14 making or for having a role in personnel
15 decisions that were made regarding the
16 commissary?

17 A. In regarding?

18 Q. Hiring.

19 A. The hiring and firing, I used to
20 hire, but the people there, the agencies used
21 to send me a bunch of, you can say bums,
22 because they work one week, they don't show up
23 the next week. So Brian says that for now on,
24 you hire somebody, I want to speak to them.

25 Q. Okay.

1 L. Rivera
2 that Brian Zaro got involved?

3 A. Yes. Because some of the people
4 that I hired from the agency, they were giving
5 me problems. So I would talk to Brian and,
6 Brian, this guy is not fitting in to the
7 program here, I'm getting yelled at, I'm
8 getting cursed at me. And Brian would tell
9 me, let them go. So I would let them go.

10 Q. So, in addition, so with respect to
11 the termination of employees, you would go to
12 Brian and say, this employee isn't doing the
13 job properly, we need to let him go?

14 A. Yes. Or he is starting a fight back
15 there, anything, or whatever, because it was
16 an incident, what I got -- I told him to leave
17 and he started, he wanted to fight me. He was
18 throwing things at me and, you know, I wasn't
19 going to attack him. So I would tell him to
20 leave. I had to call the police.

21 Q. Do you remember this employee's
22 name?

23 A. No.

24 Q. But with respect to this employee
25 who started the fight, following that fight

1 L. Rivera

2 A. Yes.

3 Q. Okay.

4 And so you said that Brian -- I'm
5 sorry, were you done?

6 A. No.

7 Q. Okay.

8 I'm sorry.

9 A. I was the manager of the commissary,
10 but I made -- wait a minute. This is towards
11 the end.

12 Because when I hired Nazia, Nazia's
13 husband, he became my right-hand man when I'm
14 not there. When the Zaro's called me to go to
15 37th Street or to go to Grand Central, I would
16 tell Nazia's uncle, please watch the store
17 while I'm gone.

18 Q. Okay.

19 But Brian Zaro was not always there?

20 A. No.

21 Q. And John Apgar was not always there
22 either?

23 A. No.

24 Q. Okay.

25 So --

1 L. Rivera

2 that period were \$850, your regular earnings,
3 you see right under that it says Earnings?

4 A. Yes.

5 Q. And the rate and the hours are both
6 blank and it just says 850; right?

7 A. Yes.

8 Q. Okay.

9 So does this document refresh your
10 recollection that your starting salary was,
11 indeed, \$850 when you first started at Zaro's?

12 A. I guess so.

13 Q. If you see the deductions,
14 underneath there you see we've got some -- the
15 only deductions here are for the Federal
16 income tax, Medicare, Social Security and
17 SUI SDI, and New York State income tax. There
18 are no deductions for, you know, not having
19 worked five days or anything like that;
20 correct?

21 A. This was for five days.

22 Q. Okay.

23 So that was -- yes, that was your
24 regular salary for five days; correct?

25 A. Yes.

1 L. Rivera

2 clarified for you what these pay stubs are?

3 A. Yes.

4 Q. That Anjost 000255 is the first week
5 and that Anjost 254 is the second week?

6 A. Yes, sir.

7 Q. Can we agree that Anjost 254
8 reflects that, once again, your regular pay
9 was 850 for that week?

10 A. Yes, sir.

11 Q. And, once again, the only deductions
12 are income tax and Medicare and Social
13 Security; correct, on Anjost 254?

14 A. Yes, sir.

15 Q. Okay.

16 Let's flip to Anjost 253, which, as
17 you'll see, is dated seven days later on the
18 period end, if you look at the period end of
19 254 versus 253; correct?

20 A. I'm sorry?

21 Q. I'm sorry.

22 So the period end on Anjost 253 is
23 8/12/2007; correct?

24 A. Yes.

25 Q. And the period end on Anjost 254, if

1 L. Rivera

2 you flip back one page, flip back to the
3 second page, was a -- the period end there was
4 8/5/2007; correct?

5 A. Yes. Period end 8/5.

6 Q. Okay.

7 So the 253 is seven days following
8 254; correct? It's the next week's pay stub?

9 A. Yes.

10 Q. Okay.

11 And, once again, we've got your
12 regular pay at 850, and the deductions only
13 being the income tax, Social Security
14 deductions; correct?

15 A. Yes.

16 Q. Okay.

17 Let's flip to Anjost 252. And, once
18 again, we see that this is reflecting the next
19 week's pay stub. The period end on 252 is --
20 you see where it says 8/19/2007; correct?

21 A. Yes, sir.

22 Q. That is the period end, and that's
23 one week following the period end on the
24 previous statement; correct?

25 A. Yes, sir.

1 L. Rivera

2 Q. Okay.

3 And, once again, this is an earnings
4 statement with your name on it up at the top;
5 correct?

6 A. Yes, sir.

7 Q. And, once again, your regular
8 earnings here are 850 a week; correct?

9 A. Yes, sir.

10 Q. Okay.

11 And the deductions, once again, are
12 only deductions for income tax, Social
13 Security and the like; correct? On 252.

14 A. Yes, sir.

15 Q. Okay.

16 Now, let's go to Anjost 251. And
17 here, once again, an earnings statement with
18 your name on it; correct?

19 A. Yes, sir.

20 Q. And the period end is one week
21 following the period end on 252; correct?

22 A. Yes, sir.

23 Q. And the earnings statement here
24 indicate that, once again, you earned 850 in
25 regular earnings; correct?

1 L. Rivera

2 A. Yes, sir.

3 Q. And like the other earnings, the
4 rate and hours columns are blank; correct?

5 A. Yes, sir.

6 Q. Okay.

7 And, once again, like the other
8 statements, your -- the only deductions
9 reflected here are income tax, Medicare,
10 Social Security, et cetera; correct?

11 A. Yes, sir.

12 Q. And there are no deductions here for
13 your not having worked a full week or your
14 being paid less than five days; correct?

15 A. Yes, I guess so.

16 Q. Okay.

17 Let's go to Anjost 250. And, once
18 again, another earnings statement for the next
19 week in this series, so we're now up to
20 September 2, 2007; correct?

21 A. Yes, sir.

22 Q. And, once again, here we've got the
23 regular rate is still 850, the deductions are
24 still just the statutory deductions; correct?

25 A. Yes, sir.

1 L. Rivera

2 Q. Okay.

3 Let's go to Anjost 249, which is
4 seven days following the pay period on 250;
5 correct?

6 A. Yes, sir.

7 Q. And, again, your earnings statement
8 with the regular earnings of 850 a week;
9 correct?

10 A. Yes, sir.

11 Q. And no deductions other than the tax
12 and Medicare, Social Security, statutory
13 deductions; correct?

14 A. Yes, sir.

15 Q. Okay.

16 Let's go to Anjost 248, which is the
17 next page. And this reflects period end of
18 9/16/2007; correct?

19 A. Yes, sir.

20 Q. And that's seven days following the
21 previous period end; correct?

22 A. Yes, sir.

23 Q. Okay.

24 And this is, again, your earnings
25 statement reflecting a regular salary wage of

1 L. Rivera

2 850 a week; correct?

3 A. Yes, sir.

4 Q. And reflecting deductions of only
5 the statutory deductions; correct?

6 A. Yes, sir.

7 Q. Okay.

8 Now, let's go to 247, which is the
9 following period, period end 9/23/2007, and
10 this is another earnings statement -- this is
11 the next earnings statement in the series;
12 correct?

13 A. Yes, sir.

14 Q. And so this is, once again, your
15 earnings statement reflecting that you earned
16 850 a week as your regular salary with no
17 deductions other than the statutory
18 deductions; correct?

19 A. Yes, sir.

20 Q. Okay.

21 Now, Mr. Rivera, during the course
22 of your -- during the course of your
23 employment with Zaro's, did you ever receive
24 raises to your weekly salary?

25 A. Yes.

1 L. Rivera

2 what happened was, I went to show them a
3 production. You know what I mean? Show them
4 how to play with the bread and stuff like
5 that, and they wanted me to stay there and
6 manage the place.

7 Q. So you were working for two years at
8 the W before you started working at Zaro's?

9 A. Yes.

10 Q. Okay.

11 And so the reason you received this
12 raise was because you wanted to be making what
13 you had been working at W at Zaro's?

14 A. Yes.

15 Q. Okay.

16 So let's turn back to Anjost 246,
17 Exhibit -- the first page of Exhibit 8. And
18 so we can agree then, Mr. Rivera, that this
19 document reflects that you were earning as of,
20 the period ending September 30, 2007, a
21 regular salaried wage of \$1,097 a week;
22 correct?

23 A. Yes.

24 Q. Okay.

25 So let's go to the next page, Anjost

1 L. Rivera

2 245. And this is the next period, period
3 ending October 7, 2007. And we can agree,
4 Mr. Rivera, that -- can we not, that this
5 document reflects now that you're receiving,
6 once again, your regular earnings, your
7 regular salary is \$1,097, and that this
8 document reflects only statutory deductions
9 for income tax and Medicare and so forth;
10 correct?

11 A. Yes.

12 Q. Let's go to the next page, Anjost
13 245, which is an earnings, your earnings
14 statement for the period end October --
15 10/14/2007; correct?

16 A. Yes.

17 Q. And this document, again, reflects
18 regular earnings of \$1,097 and only Federal
19 and State income, Medicare, Social Security
20 tax deductions; correct?

21 A. Yes.

22 Q. Now -- and then let's go to Anjost
23 243, which is your earnings statement, period
24 end October 21, 2007; correct?

25 A. The 21st to the 26st you're talking

1 L. Rivera

2 about?

3 Q. Yes. Anjost 000243; right?

4 A. Yes, sir.

5 Q. And, again, this is your earnings
6 statement for the period end October 21, 2007;
7 correct?

8 A. Yes, sir.

9 Q. And it reflects, once again, regular
10 salaried earnings of \$1,097 and deductions of
11 only the Federal and State income tax and
12 Medicare, Social Security; correct?

13 A. Yes, sir.

14 Q. Okay.

15 Anjost 242, if we go to that, which
16 is the next page and is your earnings
17 statement for the next week, period end
18 10/28/2007; correct?

19 A. Yes, sir.

20 Q. And it reflects regular earnings of
21 \$1,097 in a salaried wage; correct?

22 A. Yes, sir.

23 Q. And only deductions for, once again,
24 the statutory income tax, Medicare, Social
25 Security, et cetera; correct?

1 L. Rivera

2 A. Yes, sir.

3 Q. Okay.

4 Let's go to the next page, Anjost
5 241, which is the earnings statement for the
6 next period, period end, 11/04/07; correct?

7 A. 11/04 to 09, is that the one?

8 Q. Correct. Anjost 000241; correct?

9 A. Yes, sir.

10 Q. Okay.

11 And this document reflects regular
12 salaried earnings of \$1,097; correct?

13 A. Yes, sir.

14 Q. And it reflects no deductions, other
15 than the statutory deductions for income tax,
16 Medicare, Social Security, and the
17 New York State income tax; correct?

18 A. Yes, sir.

19 Q. Okay.

20 Let's go to Anjost 240, the next
21 page, which is the earnings statement, your
22 earnings statement for period end 1/11/07;
23 correct?

24 A. Yes, sir.

25 Q. And that reflects regular earnings

1 L. Rivera

2 of \$1,097 in salaried earnings; correct?

3 A. Yes, sir.

4 Q. And, once again, no deductions,
5 other than the statutory deductions for income
6 tax and Medicare and so forth; correct?

7 A. Yes, sir.

8 Q. Anjost -- the next page, Anjost 239,
9 which is your earnings statement for the next
10 period, period end 1/18/2007; correct?

11 A. Yes, sir.

12 Q. And that reflects, once again, your
13 regular salaried earnings of \$1,097; correct?

14 A. Yes, sir.

15 Q. And no deductions other than the
16 income tax, Medicare, Social Security, and so
17 forth; correct?

18 A. Yes, sir.

19 Q. Okay.

20 The next page is Anjost 238, which
21 is your earnings statement for the period end
22 11/25/2007; correct?

23 A. Yes.

24 Q. And this reflects your regular
25 salary of 1097; correct?

1 L. Rivera

2 A. Yes.

3 Q. And it also reflects a holiday and
4 earnings of 219.40, \$219.40; correct?

5 A. Yes, sir.

6 Q. What is -- do you know what that pay
7 was for?

8 A. It's holiday pay.

9 Q. So, what does that mean?

10 A. That means I worked that holiday and
11 I got paid for it.

12 Q. So in addition to your salary, you
13 worked an extra day and received additional
14 pay?

15 A. They paid me holiday pay.

16 Q. Okay.

17 And did they typically pay you
18 holiday pay if you worked on a holiday?

19 A. Yes.

20 Q. And why did they pay you the holiday
21 pay in addition to your salary pay?

22 A. Because I got holiday pay.

23 Q. So when you started work at Zaro's,
24 did they explain to you, if you worked a
25 holiday, you'd get pay over and above your

1 L. Rivera

2 you'd receive that \$219.40?

3 A. Yes.

4 Q. Okay.

5 Let's go to Anjost -- the next page,
6 Anjost 237, which is the earnings statement
7 for the next week; correct?

8 A. Yes.

9 Q. Period end 12/02/07; correct?

10 A. Yes.

11 Q. And that's -- this is now reflecting
12 that your regular salary wage of \$1,097;
13 correct?

14 A. Yes, sir.

15 Q. Okay.

16 And no deductions other than the
17 income tax and other tax deductions; correct?

18 A. Correct.

19 Q. Okay.

20 Let's go to 236, the next page,
21 which is your earnings statement for the
22 period end 12/09/2007; correct?

23 A. Correct.

24 Q. And this reflects, once again, your
25 regular salaried earnings of \$1,097, and only

1 L. Rivera

2 quickly. Okay.

3 So, Mr. Rivera, you've now got in
4 front of you Exhibit 9; correct?

5 A. Correct.

6 Q. Okay.

7 And this is another series of
8 earnings statements that begins Anjost 203 and
9 the last page is Anjost 183; correct? The
10 Bates labels on the bottom right-hand corner.

11 A. 183.

12 Q. Okay.

13 So, Mr. Rivera, this is an earnings
14 statement for the period ending 7/27/2008;
15 correct?

16 A. Yes, sir.

17 Q. And if you look at your -- the
18 regular pay here, it reflects your salaried
19 wage of 12 -- \$1,207; correct?

20 A. Correct.

21 Q. So does this document reflect that
22 you received another pay increase while you
23 were working at Zaro's?

24 A. Yes.

25 Q. Do you remember why, Mr. Rivera,

1 L. Rivera
2 that on or about July 27, 2008 you received a
3 pay increase?

4 A. I guess when you do good work, you
5 got honored for it.

6 Q. Do you remember who gave you this
7 pay increase?

8 A. All my pay raises came from John
9 Apgar.

10 Q. Okay.
11 And so this document reflects your
12 regular earnings along with the -- only the
13 statutory deductions; correct?

14 A. Yes.

15 Q. And it looks like you, in addition
16 to your salary, you worked an extra day and
17 received additional pay for that day; correct?

18 A. Yes.

19 Q. All right.

20 Let's go to 202, the next page,
21 which reflects the period end August 3, '08,
22 the next week. It's your earnings statement;
23 correct?

24 A. Can we go back to the beginning
25 here, to Exhibit 9?

1 L. Rivera

2 Q. So you received a paid day off for
3 your birthday?

4 A. Yes.

5 Q. Okay.

6 A. No, but I worked. No, I'm not sure.
7 I'm not sure. But I know I got paid for my
8 birthday.

9 Q. Okay.

10 A. So I worked the five days and my
11 birthday came in as a sixth day.

12 Q. Even though you only worked the five
13 days, you received an extra day's pay?

14 A. Yes. Because that was in my thing.
15 That's what I got, five sick days, a paid --
16 and my paid birthday.

17 Q. Okay.

18 Well, let's talk about that quickly,
19 Mr. Rivera. So when you started, you received
20 how many -- you received a certain number of
21 paid sick days?

22 A. I think it was five holiday paid.

23 Q. Okay.

24 So you received five holiday -- paid
25 holidays?

1 L. Rivera

2 A. No. I'm sorry. It's five sick
3 days.

4 Q. Okay.

5 A. Five sick days.

6 Q. Okay.

7 So you received five paid sick days
8 off --

9 A. A paid birthday --

10 Q. Okay.

11 A. -- and I don't remember the others.

12 Q. Did you receive paid vacation?

13 A. Yes.

14 Q. How many days of vacation did you
15 receive?

16 A. One week.

17 Q. Okay.

18 So you received one week of
19 vacation, five sick days. Did you receive any
20 personal days?

21 A. I think I get two personal days, I
22 think.

23 Q. Okay.

24 And then did you receive any
25 holidays off?

1 L. Rivera

2 A. No. I worked holidays.

3 Q. Okay.

4 So Christmas Eve?

5 A. We worked.

6 Q. Christmas?

7 A. Christmas we worked.

8 Q. Thanksgiving?

9 A. Seven days operation, 24 hours.

10 Q. Okay.

11 So you worked all those holidays?

12 A. Yes.

13 Q. Okay.

14 But you did receive -- okay.

15 So let's refer back then to

16 Exhibit 9, and I think we've -- we'll go to
17 the second page. I think we discussed Anjost
18 203. We'll go to Anjost 202, which is the
19 second page of the document.

20 A. Yes.

21 Q. And that reflects the earnings --
22 your earnings statement for the period ending
23 8/3/08; correct?

24 A. Yes.

25 Q. And that reflects your regular pay

1 L. Rivera

2 of 1207?

3 A. Yes.

4 Q. It reflects no deductions, other
5 than the statutory tax and Medicare
6 deductions?

7 A. Yes.

8 Q. And it reflects an additional day of
9 pay; correct?

10 A. Yes.

11 Q. Okay.

12 Let's go to 201. And this document
13 is the next earnings statement, period end
14 8/10/08. It reflects the same weekly salary
15 of 1207, and no deductions, other than the
16 statutory deductions; correct?

17 A. Yes, sir.

18 Q. Okay.

19 Let's go to the next page.

20 A. You're looking at 201, yes?

21 Q. I'm looking at 201.

22 A. Yes. But that other \$241, it says
23 "blank." On my paychecks it says "Other."

24 Q. Okay.

25 And what --

1 L. Rivera

2 A. It doesn't say "blank."

3 Q. And what does that blank on this
4 earnings statement refer to, Mr. Rivera?

5 A. An extra day worked.

6 Q. Okay.

7 So in addition to working your
8 regular five-day salaried workweek, you came
9 in and worked a weekend day?

10 A. Yes. A weekend day.

11 Q. Okay.

12 Let's go to 200, Anjost 200, the
13 next page, which is an earnings statement,
14 your earnings statement for the period end
15 8/17/2008; correct?

16 A. Correct.

17 Q. And this reflects your regular
18 salaried wage of \$1,207, along with extra pay
19 for an additional work date; correct?

20 A. Correct.

21 Q. And it reflects deductions only --
22 the only deductions reflected are the
23 statutory tax and Medicare and Social Security
24 deductions; correct?

25 A. Correct.

1 L. Rivera

2 Q. I'm sorry.

3 So this document, Anjost 196 --

4 A. Yes, sir.

5 Q. -- your -- has a period end of
6 9/14/08; correct?

7 A. Yes.

8 Q. And it reflects your regular salary
9 of \$1,207, and an additional pay of 241.40;
10 correct?

11 A. Yes, sir.

12 Q. Okay.

13 And the only deductions here, once
14 again, are those for income tax, Medicare and
15 Social Security; correct?

16 A. Yes.

17 Q. Okay.

18 Let's go to the next page, 195, your
19 earnings statement, again, for the next week,
20 next period, I'm sorry, period end 9/21/2008.

21 Like the previous documents, I
22 believe this document reflects your regular
23 salaried wage of \$1,207, as well as additional
24 pay of 241 for an additional day of work;
25 correct?

1 L. Rivera

2 A. Correct.

3 Q. So -- and the only deductions are
4 those for income tax, Medicare, Social
5 Security, and so forth; correct?

6 A. Correct.

7 Q. There are no deductions -- there no
8 other deductions to your wage other than the
9 statutory deductions; correct?

10 A. Correct.

11 Q. The next page is 194, which is your
12 earnings statement for the next period,
13 9/28/2008. This one reflects only your
14 regular salaried pay; correct?

15 A. Correct.

16 Q. So here you worked just your regular
17 five-day shift; correct?

18 A. Correct.

19 Q. And you received -- the only
20 deductions that were taken from your pay were
21 those for taxes and so forth; correct?

22 A. Correct.

23 Q. Let's go to the next page, 193, is
24 an earnings statement for period end
25 10/5/2008; correct?

1 L. Rivera

2 A. Correct.

3 Q. And this reflects, once again, your
4 regular salary of \$1,207 and an additional
5 day's worth of pay for 241.40; correct?

6 A. Correct.

7 Q. And, again, the only deductions here
8 are for -- excuse me -- the statutory taxes,
9 Medicare, Social Security; correct?

10 A. Correct.

11 Q. Let's go to the next page, 192.
12 This is an earnings statement for the next
13 week, period end 10/12/2008; correct?

14 A. Correct.

15 Q. And, once again, we've got your
16 regular salary of \$1,207, along with an
17 additional day of pay at \$241.40; correct?

18 A. Correct.

19 Q. And, again, here we have no
20 deductions other than the statutory
21 deductions; correct?

22 A. Correct.

23 Q. The next page is 191, which is an
24 earnings statement for the next week, period
25 end October 19, 2008; correct?

1 L. Rivera

2 A. Yes.

3 Q. And this, once again, reflects your
4 regular pay of \$1,207, along with an
5 additional day of work on top of your salaried
6 wage; correct?

7 A. Correct.

8 Q. And your deductions are only the
9 statutory deductions; correct?

10 A. Correct.

11 Q. So let's go to 190, the earnings
12 statement for the next period, October 26,
13 2008, which, again, reflects your regular
14 salary of \$1,207, and here reflects blank pay
15 of 482.80.

16 Mr. Rivera, do you know why the
17 blank pay went --

18 A. Seven days a week.

19 Q. Okay.

20 Let me just finish the question.

21 Let me finish the question.

22 So do you know why your blank pay
23 went on Anjost 191 from 241.40 to blank pay of
24 482.80 on Anjost 190?

25 A. I worked seven days that week.

1 L. Rivera

2 Q. Okay. Thank you.

3 And you deduct -- the only
4 deductions here are, once again, those
5 statutory deductions; correct?

6 A. Correct.

7 Q. Okay.

8 Anjost 189 is the period end
9 November 2 -- 11/2/08; correct?

10 A. Yes, sir.

11 Q. And, once again, this document
12 reflects your regular earnings of \$1,207 in
13 salary and an additional pay of 241.40 for an
14 extra day of work; correct?

15 A. Correct.

16 Q. And, again, the only deductions are
17 your statutory deductions; correct?

18 A. Yes, sir.

19 Q. Okay.

20 The next statement is your -- the
21 period end 11/09/2008, which reflects the
22 earning -- regular salaried earnings of \$1,207
23 and an additional day of work at 241.40;
24 correct?

25 A. Correct.

1 L. Rivera

2 Q. So, once again, this document
3 reflects you received your regular salary and
4 then you worked a sixth day and received
5 an additional -- additional pay for that day;
6 correct?

7 A. Correct.

8 Q. And your deductions here are only
9 the statutory deductions for income tax,
10 Social Security, Medicare and New York State
11 income tax; correct?

12 A. Correct.

13 Q. Okay.

14 So let's go to 187, which is the
15 earnings statement for the next period, 11 --
16 period end 11/16/2008. And similarly to the
17 rest of these, it reflects a regular salary of
18 \$1,207 and an additional day of work at
19 241.40; correct?

20 A. Correct.

21 Q. And there are no deductions, other
22 than the statutory deductions; correct?

23 A. Correct.

24 Q. Anjost 186 is -- I'm sorry, do you
25 need to answer that?

1 L. Rivera

2 A. No.

3 Q. Okay.

4 Is an earnings statement for the
5 next week, period end 11/23/2008, with, once
6 again, reflecting your salaried regular wage
7 of \$1,207, along with blank pay of 482.80.

8 And, once again, Mr. Rivera, can you
9 explain why the blank pay in this document on
10 186 has gone from -- gone to 482, as opposed
11 to previous statements, such as Anjost 187,
12 the previous page, that reflects pay of
13 241.40?

14 A. I worked seven days.

15 Q. Okay.

16 Let's go to Exhibit -- or the next
17 page, I'm sorry, Anjost 185, the earnings
18 statement for the period ending 11/30/2008.
19 And that reflects your regular pay of \$1,207,
20 along with blank pay of 241 and holiday pay of
21 the same amount.

22 So, Mr. Rivera, can you explain, do
23 you recall why you received, in addition to
24 your salary, these two -- the additional pay
25 reflected here?

1 L. Rivera

2 A. I worked seven days.

3 Q. And why was one blank and one
4 holiday.

5 Do you recall?

6 A. Because one day becomes a
7 sick day -- No. 6 day would be Saturday or --
8 I mean, Sunday. And then if the holiday lands
9 on a Saturday, I get paid for the Saturday.

10 Q. Okay.

11 And, once again, Mr. Rivera, the
12 only deductions here are those for your income
13 tax, Medicare, Social Security; correct?

14 A. Correct.

15 Q. Next page is Anjost 184, which is
16 your pay period, your earnings statement for
17 the pay period ending 12/07/08. And this
18 reflects regular pay of -- regular salaried
19 pay of 1207 or \$1,207; correct?

20 A. Correct.

21 Q. Along with an additional day's worth
22 of pay at 241.40; correct?

23 A. Correct.

24 Q. And the only deductions here are
25 those statutory income tax and Social

1 L. Rivera

2 Security, Medicare, and so forth; correct?

3 A. Correct.

4 Q. Okay.

5 Last one on this sequence is the
6 earnings statement, your earnings statement
7 with period end 12/14/2008, with your regular
8 salaried earnings of \$1,207, along with an
9 additional blank pay of 241.40, which, as
10 reflected previously, Mr. Rivera, does this
11 document reflect that you received your
12 regular weekly salary and then worked an
13 additional day on top of that salary and
14 received an additional pay for that extra day
15 of work?

16 A. Correct.

17 Q. Okay.

18 And your own deductions are the
19 statutory deductions for income tax and so
20 forth; correct?

21 A. Correct.

22 Q. Okay.

23 Let me show you --

24 MR. POSSIDENTE: I think we're up
25 to -- this is going to be 10. Which is

1 L. Rivera

2 Let's turn to Exhibit 11, which is
3 the series of earnings statements.

4 Now we've already -- now,
5 Mr. Rivera, let's turn back to Anjost 70, that
6 first one, which we've already discussed,
7 reflects your salary increase. It also
8 reflects a sick day of \$275.40.

9 So, Mr. Rivera, do I take this to
10 mean that you also, in addition to your
11 salary, took a sick day and you were paid for
12 a sick day?

13 A. Yes.

14 Q. Okay.

15 And, once again, the only deductions
16 here are your deductions for income tax,
17 Medicare, Social Security, et cetera; correct?

18 A. Correct.

19 Q. Let's go to 69, which is the second
20 page of Exhibit 11, earnings -- your earnings
21 statement for the next period, period end
22 2/6/2011. And, once again, this document
23 reflects, Mr. Rivera, your salaried wage of
24 1377 and then additional pay of 275.40;
25 correct?

1 L. Rivera

2 A. Correct.

3 Q. And the additional pay, Mr. Rivera,
4 what does that additional blank line, Mr. --
5 line labeled --

6 A. What page?

7 Q. I'm sorry, Mr. Rivera. Let me
8 finish the question.

9 That in addition to the regular,
10 your regular salaried earnings, Mr. Rivera,
11 there's also a line here labeled blank. What
12 does that line, which has zero, under the Rate
13 column is blank, under the Hours column says
14 zero, and under the This Period column says
15 275.40, what does that -- what does that line
16 reflect?

17 A. That I worked six days.

18 Q. Let's go to Anjost 68, which is the
19 next document in this series. It is the
20 earnings statement for the next period, period
21 end 2/13/11. And it reflects your regular
22 earnings of \$1,377; correct?

23 A. Correct.

24 Q. Once again, Mr. Rivera, in addition
25 to your weekly salary, you received additional

1 L. Rivera

2 pay for an additional day worked; correct?

3 A. Correct.

4 Q. And here there are no deductions,
5 other than the statutory deductions for income
6 tax, Medicare, Social Security, et cetera;
7 correct?

8 A. Correct.

9 Q. Let's go to Anjost 67, which is the
10 earnings statement for the next period,
11 dated -- well, period end 2/20/2011. And it
12 reflects your, once again, your salaried wage
13 of \$1,377; correct?

14 A. Correct.

15 Q. And then it reflects an additional
16 day of pay for additional work, an additional
17 day of work above your salaried wage; correct?

18 A. Correct.

19 Q. And there are no deductions other
20 than your statutory deductions; correct?

21 A. Correct.

22 Q. Let's go to Anjost 66, which is your
23 earnings statement for the next period, period
24 end 2/27/2011. And, once again, Mr. Rivera,
25 does this document reflect that you received

1 L. Rivera

2 regular salaried earnings of \$1,377?

3 A. I'm sorry?

4 Q. I'm sorry, Mr. Rivera.

5 Does this document reflect that you
6 earned your regular salary for this week of
7 \$1,377?

8 A. Yes.

9 Q. And does it also reflect that you
10 earned, in addition to your salary, money for
11 an additional -- additional day of work?

12 A. Yes.

13 Q. Over and above your salary; correct?

14 A. Correct.

15 Q. And it reflects that your only
16 deductions were those for statutory income
17 tax, Medicare, et cetera, deductions; correct?

18 A. Correct.

19 Q. Let's go 265, which is the earnings
20 statement for the next period, 3 -- period end
21 3/06/2011. And it reflects -- are you with
22 me?

23 A. Yes.

24 Q. Okay. Sorry.

25 With your regular earnings are, once

1 L. Rivera

2 again, \$1,377 in regular salary and it
3 reflects that you also worked an additional --
4 in addition to your salary, you received
5 additional compensation of \$275.40; correct?

6 A. An extra day worked.

7 Q. Okay.

8 And your -- and your statutory, your
9 deductions here are, once again, only the
10 statutory deductions; correct?

11 A. Correct.

12 Q. Okay.

13 On to 64, which is the earnings
14 statement, period end 3/13/2011, which
15 reflects your regular salaried earnings of
16 \$1,377; correct?

17 A. Correct.

18 Q. Along with additional compensation
19 of 275.40 over and above your salary; correct?

20 A. Correct.

21 Q. And what does that additional
22 compensation over and above your salary
23 reflect, Mr. Rivera?

24 A. A day's, another day's work, six
25 days.

1 L. Rivera

2 Q. Meaning that you worked a --

3 A. On Sunday.

4 Q. -- Sunday. Okay.

5 And, once again, no deductions,
6 other than the statutory deductions; correct?

7 A. Yes.

8 Q. Let's go on to Anjost 63, which is
9 the earnings statement, your earnings
10 statement for the next period, period end
11 3/20/2011. And, once again, this reflects
12 regular, your regular salaried wage of 1377,
13 along with an additional compensation for
14 additional work over and above your salary;
15 correct, Mr. Rivera?

16 A. An extra day's pay.

17 Q. Okay.

18 A. Sunday.

19 Q. And no statutory wages -- no --
20 excuse me -- deductions other than the
21 statutory deductions; correct?

22 A. Correct.

23 Q. Let's go 62. And this is your
24 earnings statement for the next period, period
25 end 3/27/2011, once again, reflecting that you

1 L. Rivera
2 end -- excuse me -- 4/15 -- or, no -- period
3 end 4/10/2011, with, once again, reflecting
4 the same as the previous, that you received
5 your regular salary and that you worked an
6 additional -- you worked Sunday over and above
7 your regular salary for the five days;
8 correct?

9 A. Correct. 270 was my extra day's pay
10 when I work on Sunday.

11 Q. So then, Mr. Rivera, and there are
12 no deductions, other than the statutory
13 deductions; correct?

14 A. Correct.

15 Q. Let's go on to 59, which is the
16 earnings statement for the next week, period
17 end 4/17/2011. And as with the previous
18 periods, Mr. Rivera, does this document
19 reflect that you have received your regular
20 salary of \$1,377, as well as additional pay of
21 \$275, for working the -- working on Sunday?

22 A. Yes.

23 Q. Okay.

24 And there are no deductions, other
25 than statutory deductions; correct?

1 L. Rivera

2 A. Correct.

3 Q. Let's go to the next page, which is
4 Anjost 58, the earnings statement, period end
5 4/24/2011. And as with the previous periods,
6 Mr. Rivera, this document reflects you earned
7 your regular salary for -- your regular salary
8 for the week, along with additional
9 compensation for working on Sunday; correct?

10 A. Correct.

11 Q. And your -- the only deductions are
12 your statutory deductions; correct?

13 A. Correct.

14 Q. Let's go to the next page, which is
15 Anjost 57, your earnings statement, period end
16 May 1, 2011, regular pay -- sorry. Once again
17 we've got the same situation; correct, where
18 you've got the -- your regular earnings and --
19 your regular earnings of your 1377 in salary
20 and you worked an additional day of 275.40;
21 correct?

22 A. Correct.

23 Q. Anjost 56 is the next page, period
24 end May -- or 05/08/2011; correct?

25 A. Correct.

1 L. Rivera

2 Q. And, once again, this reflects your
3 regular salary of 1377 for your typical
4 workweek, along with a blank of 550.80.

5 And, Mr. Rivera, can you explain why
6 the blank on 56, the blank line on 56, or --
7 can you explain why the line labeled "blank"
8 on, quote/unquote, "blank" on 65 reads 550.80,
9 whereas, in the past -- whereas, in the past
10 it has only read 275.40?

11 A. I worked seven days.

12 Q. Okay.

13 Let's go on to 55. And, Mr. Rivera,
14 this is the earnings statement dated period
15 end 5/15/2011, which, once again, reflects
16 your regular salary of 1377; correct?

17 A. Correct.

18 Q. And then an additional compensation
19 of 275.40 for your work on Sunday; correct?

20 A. Correct.

21 Q. And, once again, as with the
22 previous statements we have no deductions,
23 other than your statutory deductions; correct?

24 A. Correct.

25 Q. And let's go to 54. Your earnings

1 L. Rivera
2 statement here for this period is period end
3 May -- or period end 5/22/2011. And, once
4 again, regular salary of 1377, and additional
5 pay of 275.40; correct?

6 A. Correct.

7 Q. And so you received your regular
8 salary and then you worked on a Sunday;
9 correct?

10 A. Correct.

11 Q. And there are no deductions other
12 than statutory deductions; correct?

13 A. Correct.

14 Q. Let's go to 53, the earnings
15 statement for the next period, period end
16 May 29, 2011. And, again, earnings, 3177 in
17 your regular salary, and then blank
18 earnings -- additional earnings labeled on
19 this document, as with the rest, "blank," of
20 275.40; correct?

21 A. Correct.

22 Q. And, once again, your -- there are
23 no deductions, other than the statutory
24 deductions; correct?

25 A. Correct.

1 L. Rivera

2 Q. Let's go to 52. Your earnings
3 statement here is for the period, the next
4 period, 6/5/2011. And here, Mr. Rivera, we
5 have, I believe, your regular five-day -- your
6 regular salary, your weekly salary of \$1,377,
7 along with a blank, along with earnings of 275
8 labeled "blank," and earnings of 275 --
9 \$275.40 labeled "holiday"; correct?

10 A. Correct.

11 Q. And so what do the -- what do the
12 additional -- the blank period, the blank line
13 of 275.40 and the holiday line of 275.40 in
14 earnings, what are those two numbers?

15 A. I worked seven days a week.

16 Q. So you worked a --

17 A. I worked -- I'm sorry.

18 Q. So let me -- yes.

19 So you worked -- you worked your
20 regular five-day workweek. And then in
21 addition to that, you worked a holiday and a
22 Sunday?

23 A. Yes.

24 Q. Okay.

25 And there are no deductions in

1 L. Rivera

2 addition to your -- well, sorry. There are no
3 deductions except for the statutory income
4 tax, Medicare, Social Security deductions;
5 correct?

6 A. Correct.

7 Q. Let's go to Anjost 51, the earnings
8 statement for period end 6/12/2011, which --
9 excuse me -- as with previous statements,
10 reflects your regular salaried wage for the
11 week of \$1,377 and an additional pay labeled
12 "blank" here of 275.40; correct?

13 A. Correct.

14 Q. And that reflects, once again, as we
15 have said previously, your salary, plus an
16 additional day's worth of work; correct?

17 A. Correct.

18 Q. And there are no deductions here,
19 other than your statutory deductions; correct?

20 A. Correct.

21 Q. Let's go to the next one, Anjost 50.
22 I promise we're almost done. The earnings
23 statement here is labeled period end -- this
24 is the earnings statement for the period
25 ending 6/19/2011; correct?

1 L. Rivera

2 A. Correct.

3 Q. And this, once again, reflects your
4 salaried, your weekly salaried wage of \$1,377,
5 along with pay labeled "blank" of 275.40;
6 correct?

7 A. Correct.

8 Q. And there are no deductions, other
9 than the statutory deductions; correct?

10 A. Correct.

11 Q. And so these, once again, this
12 reflects you received your weekly salary and
13 an additional pay for an additional day's
14 worth of work; correct?

15 A. Correct.

16 Q. Let's go to Anjost 49, the earnings
17 statement, period end 6/26/11. And as with
18 the previous documents, is this the same,
19 Mr. Rivera, as the previous ones?

20 A. Yes.

21 Q. In that it reflects your salaried
22 wage and an additional day's worth of work?

23 A. Yes.

24 Q. And, once again, deductions, no
25 deductions, other than the statutory

1 L. Rivera

2 deductions; correct?

3 A. Correct.

4 Q. Let's go Anjost 48. It's your
5 earnings statement of -- your earnings
6 statement, period end 7 -- 7/3/2011,
7 reflecting, as with the previous ones,
8 Mr. Rivera, your regular weekly salary, along
9 with pay labeled "blank" of -- in the amount
10 of \$275.40; correct?

11 A. Correct, sir.

12 Q. And no deductions, other than the
13 statutory deductions; correct?

14 A. Correct.

15 Q. Let's go to the next page, which is
16 47. Earnings statement, period end 7/10/2011,
17 which reflects the -- your regular salary of
18 \$1,377; correct?

19 A. Correct.

20 Q. Along with pay in the amount of
21 \$275.40 labeled "blank" and pay in the amount
22 of \$2,375.40 labeled "holiday"; correct?

23 A. Correct.

24 Q. And so, Mr. Rivera, what do those
25 two lines reflecting blank and holiday --

1 L. Rivera

2 A. I worked an extra day, plus a
3 holiday day.

4 Q. Okay.

5 And no deductions, other than the
6 statutory deductions; correct?

7 A. Correct.

8 Q. Now, let's get to the last one,
9 which is Anjost 46, which is the earnings
10 statement for period end 7/17/2011; correct?

11 A. Correct.

12 Q. And as with the previous documents,
13 this reflects your regular salaried wage of
14 1377, along with your -- along with additional
15 pay in the amount of \$275.40 labeled "blank";
16 correct?

17 A. Correct.

18 Q. Okay.

19 So, Mr. Rivera, we've gone through
20 all of those statements. So we can agree
21 that the -- well, let's take a two-minute
22 break and we'll come back.

23 (Recess taken from 12:47 p.m. to
24 12:50 p.m.)

25 MR. POSSIDENTE: I just have a few

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS RIVERA,

Plaintiff,

– against –

ANJOST CORPORATION and JOSEPH ZARO,

Defendants.

Case No.: 13-cv-00379 (MGC)

**DEFENDANTS' STATEMENT
OF UNDISPUTED FACTS
PURSUANT TO LOCAL
RULE 56.1(A)**

Pursuant to Local Civil Rule 56.1(a) of this Court, defendants Anjost Corporation and Joseph Zaro (together, "Defendants") hereby submit the following statement of material facts as to which there is no genuine issue to be tried:

A. Plaintiff Was an Exempt Commissary Manager for Defendants.

1. Plaintiff Louis Rivera ("Plaintiff") was employed by Defendants from 2007 until 2012 as manager of Defendants' commissary, a customarily recognized department of the company. *See* Deposition of Louis Rivera, dated October 8, 2013 ("Rivera Dep.") 12:9-14; 68:7-70:13; 84:9; Declaration of Adam G. Possidente, dated May 15, 2015 ("Possidente Decl.") Ex. B (Defendant's 2007 Personnel Profile Sheet, reflecting that Plaintiff's title was "Commissary Manager").

2. As commissary manager, Plaintiff's primary responsibility was to supervise and manage the between 14 and 15 other employees preparing food for distribution to Defendants' retail locations. *See* Rivera Dep. 71:19-72:9; 72:15-21.

3. To that end, Mr. Rivera instructed those employees on which foods to prepare, how to do so, what other preparations to undertake, and dealt with any other issues that arose during the course of the day. *See id.* 71:19-78-21.

4. Plaintiff also hired employees, and participated in decisions to terminate employees. *See id.* 79:19 (“The hiring and firing, I used to hire”); 81:10-20 (discussing how Defendants acted on Plaintiff’s recommendations to terminate employees).

5. During his tenure working for Defendants, Plaintiff was a salaried employee. *See, e.g., id.* 90:9-25; 92:7-14; 92:22-93:15; 93:16-94:14; 94:16-95:15; 95:17-25; 96:3-14; 96:16-97:6; 97:8-19; 101:16-23; 101:25-102:11; 102:12-21; 102:22-103:13; 103:15-104:2; 104:4-18; 104:20-105:7; 105:8-18; Possidente Decl. Exs C, E, F, G (sample pay stubs, establishing that Plaintiff received a salary while employed by Defendants).

6. When he was hired, Plaintiff received a salary of \$850 per week. Possidente Decl. Exs. B (Defendants’ 2007 Personnel Profile sheet for Plaintiff, reflecting \$850 per week salary) & C (sample paystubs reflecting same salary).

7. Plaintiff subsequently received a series of raises, such that his salary in 2012 was \$1,377 a week. *Id.* at Exs. D (Defendants’ 2011 Personnel Profile sheet for Plaintiff, reflecting a \$1,377 per week salary) & G (sample paystubs reflecting same salary).

8. Plaintiff’s salary was never subject to deduction for quality or quantity of time worked. Instead, the only deductions were those statutorily required, such as Social Security or income taxes. *See, e.g.,* Rivera Dep. 92:11-14 (admitting that Defendants’ earning statement reflects no deductions other than statutory deductions for Medicare, income taxes, and Social Security); 93:11-14 (same); 94:11-14 (same); 95:-12-14 (answering “Yes, I guess so” to the question of “[a]nd there are no deductions here for your not having worked a full week or your being paid less than five days, correct?”); 97:14-19; 102:17-21; 103:9-13; 118:21-25; 122:13-16; *see also* Possidente Decl. Ex. C, E, F, G (sample earnings statements reflecting that Plaintiffs’ salary was never subject to deductions for quality or quantity of time worked).

9. Plaintiff also received paid sick days, paid vacation, and paid personal time. *See, e.g.,* Rivera Dep. 114:2-115:21; 136:4-18 (answering “Yes”) to question of “do I take this [paystub] to mean that you also, in addition to your salary, took a sick day and you were paid for a sick day?”).

10. In those instances, Plaintiff still received his full weekly salary, without any deductions. *See* Possidente Decl. Exs. C, E, F, G (sample earnings statements).

B. Plaintiff Was Not Paid a Day Rate

11. In addition to his normal workweek, Defendants at times also asked Plaintiff to work an extra day (typically a Saturday or Sunday). In those instances, in addition to his weekly salary, Plaintiff also received additional compensation in the form of 1/5th of his weekly salary, in addition to his guaranteed salary. *See, e.g.,* Rivera Dep. at 111:7-112:18; 116:15-117:10; 117:12-118:10; 118:12-25; 122:2-16; 122:18-123:10; 123:23-124:10; 124:11-22; 124:23-125:10; 125:11-126:6; 126:8-126:18; 126:20-127:12; 127:14-127:23; 127:24-128:14; 128:16-129:14; 129:15-130:3; 130:5-21; 136:19-137:17; 137:18-138:8; 138:9-21; 138:22-139:18; 139:19-140:11; 140:13-141:7; 141:8-141:22; 143:15-144:2; 144:3-13; 144:14-22; 144:23-145:11; 145:13-24; 145:25-146:13; 146:14-25; 147:2-148:6; 148:7-20; 148:21-149:15; 149:16-150:2; 150:4-14; 150:15-151:7; 151:8-17; *see also* Possidente Decl. Exs. C, E, F, G.

12. In all cases, Plaintiff received his weekly salary each week, without fail. *See, e.g.,* Rivera Dep. 96:24-97:3; 97:14-19; 102:3-11; 105:24-106:2; 108:11-14; 116:21-117:3; 117:12-17.

13. Thus, rather than being paid on a “day rate,” as Plaintiff claims, Plaintiff was actually a salaried employee who also received additional compensation for additional work.

Dated: New York, New York
May 15, 2015

VENABLE LLP

_____/s/
Michael J. Volpe
Adam G. Possidente
Rockefeller Center
1270 Avenue of the Americas, 24th Floor
New York, New York 10020
Telephone: (212) 307-5500
Fax: (212) 307-5598

*Attorneys for Defendants Anjost Corporation
and Joseph Zaro*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

LOUIS RIVERA,

Plaintiff,

-against-

ANJOST CORPORATION and JOSEPH
ZARO,

Defendants.

-----X

13 CV 379(MGC)

**DECLARATION OF
LOUIS RIVERA**

LOUIS RIVERA, hereby declares, under penalties of perjury pursuant to 28 U.S. 1746
as follows:

1. I was employed by the Defendants from July 2007 until July 2012. During that period, I was allowed, for pay, five sick days, 2 personal days and one vacation week. I testified to this under oath. See page 115 of my deposition transcript attached to the Declaration of Adam Possidente.
2. During my tenure with Defendants, I never worked less than five days in any week, subject to my usage of sick days, personal days and vacation days. Many weeks I worked six or seven days.
3. From the day I was hired by Defendants until my departure in July of 2012, I never received a written contract or any written notice in any form from Defendants setting forth the terms of my compensation.
4. Based upon my conversations with John Apgar, who I dealt with when I was hired by the Defendants and confirmed by the manner in which I was paid by Defendants, I was to be paid on a daily basis. As I testified under oath, during a period of time

with Defendants I was paid a daily rate of \$241.50 per day. See Transcript p. 107, lines 22-23; p. 119, lines 20-21. When I worked a five day week, I received \$1,207.50. When I worked an extra day, I received an additional day's pay of \$241.50. The rate of pay was increased on several occasions but the manner in which my compensation was determined never did.

5. My typical workday ran for 12 hours.
6. I was often requested to work weekends by Defendants. Since I was hired to run the commissary, I believed that had I not worked the extra time for the Defendants they would not have kept me in the position.

Dated: May 29, 2015



LOUIS RIVERA

A187

Case 1:13-cv-00379-MGC Document 18 Filed 05/29/15 Page 1 of 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

LOUIS RIVERA,

Plaintiff,

-against-

ANJOST CORPORATION and JOSEPH
ZARO,

Defendants.

-----X

13 CV 379(MGC)

**DECLARATION OF
ROBERT S. POWERS**

ROBERT S. POWERS, hereby declares, under penalties of perjury pursuant to 28 U.S.

1746 as follows:

1. I am the attorney for the Plaintiff, Louis Rivera.
2. I appeared before this Court for a conference on March 20, 2013. At that conference, the attorney for the Defendants told this Court that the Plaintiff was paid a straight weekly salary and was paid that salary regardless of the number of hours and the number of days worked. I advised the Court that Plaintiff was paid on a daily basis. If he worked five days he received one amount and if he worked six days, he received a higher amount.
3. The records received from Defendants show that Plaintiff was paid an amount based upon the number of days worked that week.

Dated: May 29, 2015

15/
ROBERT S. POWERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS RIVERA,

Plaintiff,

– against –

ANJOST CORPORATION and JOSEPH ZARO,

Defendants.

Case No.: 13-cv-00379 (MGC)

DECLARATION
OF ADAM G. POSSIDENTE

I, **ADAM G. POSSIDENTE**, declare under penalty of perjury that the foregoing is true and correct:

1. I am an associate at the law firm Venable LLP in New York, New York. Venable LLP represents Defendants Anjost Corporation and Joseph Zaro (“Defendants”) in the above-captioned matter (the “Action”). I submit this Declaration in further support of Defendants’ Motion for Summary Judgment (the “Motion”). I have personal knowledge of the facts stated herein, unless otherwise stated, and if called upon to do so, I would competently testify thereto.

2. True and correct copies of excerpts of plaintiff Louis Rivera’s (“Plaintiff”) deposition transcript, dated October 8, 2013, cited by Plaintiff in his opposition to the Motion are attached hereto as **Exhibit 1**. While Plaintiff cited to these excerpts, he failed to attach them to his opposition papers. Defendants attach them here for the Court’s convenience.

Dated: New York, New York
June 2, 2015

/s/
Adam G. Possidente

Exhibit 1

L. Rivera

salaried pay?

A. They'd give me an extra day's pay.
It's a holiday's pay.

Q. Okay.

So, Mr. Rivera, then Anjost 238
reflects that you worked your regular workweek
plus the holiday pay and received extra pay
for that; correct?

A. I worked that holiday.

Q. Right.

So it reflects -- well, so this
document reflects that you worked your
regular -- the regular -- you received your
regular earnings; correct?

A. Yes.

Q. And the holiday earnings?

A. That becomes another day.

Q. Okay.

So -- correct. So then your -- and
so your total then was --

A. My total day is based on a daily
basis was \$219.40.

Q. Okay.

So then when you worked a holiday,

1 Mr. Rivera

2 Q. Let's go to Anjost 199, which is the
3 earnings statement for the next week, the
4 period end 8/24/08; correct?

5 A. Correct.

6 Q. And this document, once again,
7 reflects your regular salaried earnings of
8 \$207, \$1,207 in salary, and an extra day of
9 pay; correct?

10 A. Correct.

11 Q. And so we've got your salaried wage
12 and then you -- it looks like you worked an
13 additional weekend day or something; correct?

14 A. This became now a sick day, six,
15 No. 6. I would work on Sundays. Monday
16 through Friday, plus Sunday.

17 Q. So you were working Monday through
18 Friday, plus Sunday, and they would pay -- and
19 they were paying you your regular --

20 A. A daily basis, which is my daily
21 pay, \$241.40.

22 Q. So you understood, Mr. Rivera, not
23 that they were paying you, notwithstanding the
24 fact that all of these documents -- excuse me.

25 So in addition to your salary, in

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

LOUIS RIVERA,

Plaintiff,

-against-

ANJOST CORPORATION and JOSEPH
ZARO,

Defendants.

-----X

13 CV 379(MGC)

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' STATEMENT
OF UNDISPUTED FACTS
PURSUANT TO LOCAL RULE
56.1(A)**

Plaintiff, pursuant to Local Civil Rule 56.1(a), responds to Defendants' Statement of
Facts as follows:

1. Admit.
2. Admit.
3. Admit.
4. Admit.
5. The term "salaried" as used in paragraph 5 is a legal conclusion. When Plaintiff worked a five day week, he was paid a fixed amount. When Plaintiff worked a six day week, he was paid a higher amount that was proportional to the number of days that he worked. When Plaintiff worked a seven day week, he was again paid a higher amount that was proportional to the number of days that he worked. See Rivera Transcript, p 107, lines 22-23; page 119, lines 20-21.
6. When Plaintiff was first hired, he received the sum of \$850 for five days work.
7. Plaintiff's compensation was raised in 2012 such that when he worked a five day week, he received \$1,377.

8. Plaintiff always received a minimum of five days pay while he worked for Defendants since he never worked less than five days during his tenure with Defendants. See Rivera Declaration, ¶2.
9. Plaintiff was provided with 5 sick days, one week of paid vacation and two personal days. See Rivera Deposition, p. 115.
10. For the 5 sick days and 2 personal days that Plaintiff received, he did not have to work those days to receive his pay for that day.
11. Plaintiff was often requested to work weekends. If Plaintiff worked one weekend day, he received an extra day's pay. Rivera Declaration, ¶4.
12. Plaintiff always received his five days pay for each week since he always worked at least five days a week. Rivera Declaration ¶2.
13. The statements on paragraph 13 are legal statements which do not require a response. Plaintiff admits that he claims he was paid a day rate.
14. Plaintiff never received any written notice or confirmation from Defendants setting forth the terms of his compensation. Rivera Declaration ¶3.
15. Defendant's counsel asserted to this Court at the initial conference that Plaintiff was always paid the same amount each week, regardless of the amount of hours or days worked.

Dated: May 29, 2015

LAW OFFICE OF ROBERT S. POWERS



Robert S. Powers
Attorney for Plaintiff
1540 August Road
North Babylon, NY 11703
(631) 940-7121

A194

Case 1:13-cv-00379-MGC Document 23 Filed 06/04/15 Page 1 of 2

MEMO ENDORSEDUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS RIVERA,

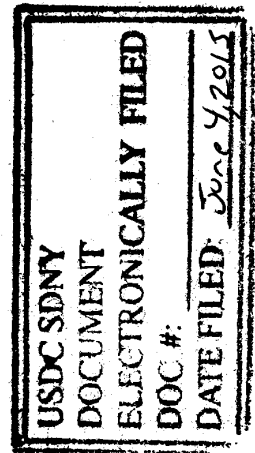
Plaintiff,

– against –

ANJOST CORPORATION and JOSEPH
ZARO,

Defendants.

Case No.: 13-cv-00379 (MGC)

**NOTICE OF MOTION
FOR SUMMARY JUDGMENT****ORAL ARGUMENT REQUESTED**

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law in Support of Defendants' Motion for Summary Judgment, Defendants' Statement of Undisputed Material Facts Pursuant to Local Rule 56.1(a), and the Declaration of Adam G. Possidente and the exhibits annexed thereto, Defendants Anjost Corporation and Joseph Zaro (together, "Defendants") will move this Court, before the Honorable Miriam Goldman Cedarbaum, Courtroom 14A, 500 Pearl Street, New York, New York 10007, on June 4, 2015 at 11:30 a.m., for an order granting summary judgment against Plaintiff, and granting Defendants such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order of this Court entered on May 6, 2015, answering papers, if any, are required to be served on the undersigned no later than May 29, 2015.

Dated: New York, New York
May 15, 2015

VENABLE LLP

/s/

Michael J. Volpe
Adam G. Possidente
Rockefeller Center
1270 Avenue of the Americas, 24th Floor
New York, New York 10020

Motion for summary judgment granted. For oral opinion, see record of proceedings, so ordered. June 4, 2015
Close Case.
United States District Judge

Case 1:13-cv-00379-MGC Document 23 Filed 06/04/15 Page 2 of 2

Telephone: (212) 307-5500

Fax: (212) 307-5598

*Attorneys for Defendants Anjost Corporation
and Joseph Zaro*

To: Robert S. Powers
Law Office of Robert S. Powers
1540 August Road
North Babylon, NY 11703
Telephone: (631) 940-7121
Email: rpowers435@optimum.net

Counsel for Plaintiff

A196

Case 1:13-cv-00379-MGC Document 27 Filed 07/06/15 Page 1 of 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
13 CV 379(MGC)

LOUIS RIVERA,

Plaintiff,

-against-

NOTICE OF APPEAL

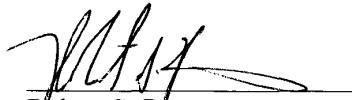
ANJOST CORPORATION and JOSEPH
ZARO,

Defendants.

-----X

Notice is hereby given that Louis Rivera, plaintiff in the above-named case, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order granting Defendants' motion for summary judgment entered in this action on June 4, 2015.

Law Office of Robert S. Powers



Robert S. Powers
Attorney for Plaintiff
1540 August Road
North Babylon, NY 11703
(631) 940-7121